

IX. SELF-DEFENSE*

California Penal Code section 197 states, "Homicide is . . . justifiable when committed by any person . . . [who is] resisting any attempt to murder any person . . ." ¹ This definition does not fully reflect the complexities involved in deciding when self-defense is a legally permissible justification for murder in California.

Self-defense consists of two elements: (1) an "honest" belief in the need to defend; and (2) a "reasonable" belief in the need to defend. ² The defendant must subjectively or *actually* believe in the need to defend against imminent harm. In addition, the defendant's belief must be objectively reasonable.

If a defendant had an honest but unreasonable belief in the need to defend against imminent harm, the result is imperfect self-defense. In cases of imperfect self-defense, a defendant can be convicted of manslaughter, but not murder. ³ Thus, a defendant will only be completely exonerated if there is *both* a subjective and objective belief in the need to defend. ⁴

Recent developments in the law of self-defense focus on several areas. The courts have redefined, and in some cases, broadened the definition of "objectively reasonable." ⁵ They have also reevaluated what types of evidence the fact-finder may consider to establish how a reasonable person in the defendant's position would act. ⁶

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1. CAL. PENAL CODE § 197(1) (West 1999 & Supp. 2002).

2. *People v. Flannel*, 25 Cal. 3d 668, 674, 603 P.2d 1, 4, 160 Cal. Rptr. 84, 87 (1979).

3. *See People v. Humphrey*, 13 Cal. 4th 1073, 1082, 921 P.2d 1, 6, 56 Cal. Rptr. 2d 142, 147-48 (1996).

4. *See id.*

5. *See People v. Hardin*, 85 Cal. App. 4th 625, 102 Cal. Rptr. 2d 262 (2000); *People v. Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823 (1999); *People v. Trevino*, 200 Cal. App. 3d 874, 246 Cal. Rptr. 357 (1988).

6. *Compare Humphrey*, 13 Cal. 4th 1073, 921 P.2d 1, 56 Cal. Rptr. 2d 142 with *Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823.

Section A examines the current controversy surrounding how much of the defendant's experiences and point of view should be considered in determining how an objectively reasonable person would act in the same position as the defendant. Section B introduces and discusses the concept of justifiable homicide. In Sections C and D, the requirement of imminent harm and the test for reasonable belief are discussed in detail. Section E then discusses imperfect self-defense and self-defense based on delusion. Moreover, throughout this Part, development of the self-defense doctrine in battered women's syndrome cases is discussed and compared to the more common applications of self-defense. Finally, this Part concludes with a discussion of where the courts seem to be heading.

A. A Killing in Self-Defense is Justifiable

Justifiable and excusable homicide is not punishable in California.⁷ California Penal Code section 199 states that if "[t]he homicide appear[s] to be justifiable or excusable, the person indicted must . . . be fully acquitted and discharged."⁸ The statute is simple and straightforward, but case law provides a multitude of issues that must be considered.

California Penal Code section 197 states that "[h]omicide is . . . justifiable when committed by any person [who is] . . . resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person."⁹ When a person acts justifiably and commits murder, the act is privileged.¹⁰ A privileged act is one that would usually subject the offender to liability, but it does not do so under the circumstances in which the act took place.¹¹

The amount of force used by the defendant in self-defense must be only that which is necessary. The use of excessive force destroys

7. See CAL. PENAL CODE § 199 (West 1999 & Supp. 2002).

8. *Id.*

9. CAL. PENAL CODE § 197.

10. See, e.g., *People v. Hardin*, 85 Cal. App. 4th 625, 102 Cal. Rptr. 2d 262 (2000) (holding that the victim was privileged to use force in evicting defendant from her home but the defendant's use of force against the victim's force was not privileged).

11. See *id.*

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the justification, and therefore the defense.¹² For example, in *People v. Bates*, the defendant and the victim were involved in a “tussle” in the kitchen of the defendant’s restaurant.¹³ The victim grabbed a knife and stabbed the defendant in the hip.¹⁴ The defendant grabbed and secured the knife, and then repeatedly stabbed the victim in the back, killing him.¹⁵ The court stated, “Self-defense may be resorted to in order to repel force, but not to inflict vengeance.”¹⁶ Although the victim attacked first, the court concluded that there was no reason for the defendant to take the victim’s life.¹⁷ The court held that “justifiable homicide connotes only the use of force . . . which reasonably appears to be necessary, to resist the other party’s misconduct . . . [and] that use of excessive force destroys the justification”¹⁸

B. Requirement of Imminent Harm

1. General definition

Fear of imminent harm is an essential element to self-defense.¹⁹ The fear of harm must be substantial enough to cause a reasonable person to fear death or great bodily injury.²⁰

However, in some circumstances, imminent harm is not a defense for murder.²¹ For example, in *People v. Hardin*, the defendant broke into the resident’s home and was attacked with a hammer by the resident after the defendant failed to comply with her request to leave.²² The defendant then struck and killed the

12. See *People v. Bates*, 256 Cal. App. 2d 935, 939, 64 Cal. Rptr. 575, 578 (1967).

13. See *id.* at 938, 64 Cal. Rptr. at 577.

14. See *id.*

15. See *id.*

16. *Id.* at 939, 64 Cal. Rptr. at 578.

17. See *id.* at 939, 64 Cal. Rptr. at 577.

18. *Id.* at 939, 64 Cal. Rptr. at 578 (citing *People v. Young*, 214 Cal. App. 2d 641, 646, 29 Cal. Rptr. 595, 598 (1963)).

19. See CAL. PENAL CODE §§ 197–198 (West 1999 & Supp. 2002).

20. See *id.*

21. See *People v. Hardin*, 85 Cal. App. 4th 625, 631–32, 102 Cal. Rptr. 2d 262, 266 (2000).

22. See *id.*

resident.²³ The court held that the defendant's belief that he was in imminent and deadly peril ended when he disarmed the resident.²⁴ Furthermore, the court held that a person who breaks into someone else's home cannot assert self-defense if the home owner attacks him.²⁵ In sum, when a resident acts with deadly force against an intruder in his residence, there is a presumption of imminent harm.²⁶

2. Imminent harm in battered women's syndrome cases²⁷

The California Supreme Court expanded the definition of imminent harm in the case of a battered woman in *People v. Humphrey*.²⁸ The defendant, a battered woman according to expert testimony, believed she was in imminent harm as a result of both her interactions with the victim and the cycle of escalating violence that characterized her relationship with the victim.²⁹

Battered women are typically involved in a continuing "cycle of violence" that begins early in life and continues into adulthood.³⁰ In *Humphrey*, the defendant was molested by her father from the age of seven to the age of fifteen, and she was later involved in another abusive relationship.³¹

23. *See id.*

24. *See id.* at 634, 102 Cal. Rptr. 2d at 268.

25. *See id.* at 633-34, 102 Cal. Rptr. 2d at 267-68.

26. In *People v. Owen*, 277 Cal. Rptr. 341, 347, 226 Cal. App. 3d 996, 1005 (1991), the court stated that California Penal Code section 198.5 creates a rebuttable presumption of reasonable fear:

[T]he statute was enacted to permit residential occupants to defend themselves from intruders without fear of legal repercussions, to give "the benefit of the doubt in such cases to the resident, establishing a presumption that the very act of forcible entry entails a threat to the life and limb of the homeowner." (Press release from the office of Sen. H. L. Richardson (the bill's author) Oct. 1, 1984).

27. "Battered women's syndrome 'has been defined as a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.'" *People v. Humphrey*, 13 Cal. 4th 1073, 1083-84, 921 P.2d 1, 7, 56 Cal. Rptr. 2d 142, 148-49 (1996) (citations omitted).

28. *See id.*

29. *See id.* at 1073, 921 P.2d at 1, 56 Cal. Rptr. 2d at 142.

30. *See id.* at 1079, 921 P.2d at 4, 56 Cal. Rptr. 2d at 145.

31. *See id.* at 1079-80, 921 P.2d at 4, 56 Cal. Rptr. 2d at 146.

During the defendant's relationship with her husband, the husband repeatedly brutalized the defendant by hitting her and threatening to kill her.³² The day before the defendant shot her husband, the husband fired his gun at her, narrowly missing her. Then, on the day of the husband's death, the couple drove into the mountains, where the husband said that the mountains would be a good place to kill the defendant.³³

Later that night, Humphrey shot her husband and then claimed self-defense, arguing that the killing was justifiable because she was in imminent fear for her life.³⁴ However, Humphrey killed the victim *following* an argument that had escalated into threats of violence, not *during* the argument.³⁵ Her husband was unarmed and not overtly threatening her at the time of his death.³⁶ Nonetheless, the court applied California Evidence Code section 1107 and held that the defendant's objectively reasonable belief in the imminence of harm could be examined from her viewpoint as a battered woman.³⁷ For the first time, the court admitted evidence of battered women's syndrome to prove the objective reasonableness of the defendant's fear of imminent harm, and held that a perception of imminent harm could "reasonably follow from the defendant's experience as a battered woman."³⁸

In ruling that the defendant's past perceptions could create a reasonable fear of imminent harm, the court fundamentally changed

32. *See id.* at 1080, 921 P.2d at 4, 56 Cal. Rptr. 2d at 146.

33. *See id.*

34. *See id.* at 1082, 921 P.2d at 5–6, 56 Cal. Rptr. 2d at 147.

35. *See id.* at 1077, 921 P.2d at 4–5, 56 Cal. Rptr. 2d at 146.

36. *See id.* at 1077–78, 921 P.2d at 2–3, 56 Cal. Rptr. 2d at 144–45. The defendant reported to the police that before firing, she told the victim, "You're not going to hit me anymore." At the scene of the crime, the defendant told the police officer, "I'm just tired of him hitting me." He said, "You're not going to do nothing about it." She stated, "I showed him, didn't I?" The prosecution pointed to these statements as evidence of the lack of *imminent* harm. *Id.* at 1077, 921 P.2d at 3, 56 Cal. Rptr. at 144–45.

37. The California Evidence Code provides, "[i]n a criminal action, expert testimony is admissible by either the prosecution or the defense regarding battered women's syndrome, including the physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence" CAL. EVID. CODE § 1107(a) (West 1995 & Supp. 2003).

38. *Humphrey*, 13 Cal. 4th at 1085, 921 P.2d at 8, 56 Cal. Rptr. 2d at 149–50.

the defining properties of reasonable belief in imminent harm. This change, however, remains limited to cases involving battered women's syndrome.

3. Expansion of "imminence" in other contexts

The courts retain a narrow definition of "imminence" in other types of cases.³⁹ Although the court was willing to modify the way it examined reasonable belief in imminence in *Humphrey* to include a view of imminence from the defendant's perspective,⁴⁰ it was unwilling to do so in the case of *People v. Romero*.

In *Romero*, the defendant was a gang member who killed a member of a rival gang during a street fight.⁴¹ The defendant was armed with a knife, which he used to stab his unarmed rival in the heart.⁴² *Romero* testified that his younger brother was in the area, and that he was responsible for caring for his brother.⁴³ The defendant testified, "I had to stop [the victim]. From there, I didn't think of nothing else."⁴⁴ The defendant argued that he had to stab the victim to protect his brother, and that he therefore committed a privileged act.⁴⁵

However, in *Romero*, the court refused to allow expert testimony that might explain why the defendant felt that harm was imminent based on his perceptions as a Hispanic street gang member.⁴⁶ Citing the California Supreme Court's dicta in *Humphrey*, the *Romero* court stated, "Our decision would not, in another context, compel adoption of a 'reasonable gang member' standard."⁴⁷ The *Romero* court summarily dismissed the issue of admitting expert evidence on the basis that there was no imminence

39. See, e.g., *People v. Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823 (1999) (rejecting expert testimony about street fighting, Hispanic honor, and paternalism in considering whether the defendant actually believed he was in imminent danger).

40. See *Humphrey*, 13 Cal. 4th at 1086, 921 P.2d at 8, 56 Cal. Rptr. 2d at 150.

41. See *Romero*, 69 Cal. App. 4th at 848, 81 Cal. Rptr. 2d at 823–24.

42. See *id.* at 852, 81 Cal. Rptr. 2d at 826.

43. See *id.*

44. *Id.*

45. See *id.*

46. See *id.* at 854, 81 Cal. Rptr. 2d at 827.

47. *Id.*

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demonstrated by the facts.⁴⁸ Because of the lack of imminent harm, the court held that the expert evidence was irrelevant, stating that it was not necessary to consider reasonableness if there was no imminence.⁴⁹

In *Humphrey*, the court opened the door to allow juries to consider the character, history, and perception of the defendant when evaluating whether a defendant's perception of imminent harm was reasonable.⁵⁰ But from a purely factual perspective, *Humphrey* was in no greater imminent harm than *Romero*. In both cases, there was a chance that the violence could escalate.⁵¹ However, at the time of each of the homicides, the violence had not yet escalated or shown any clear signs that it might rise to the level of imminent harm. Nevertheless, the court considered how "the psychological impact of being a battered woman [affected the woman's] perception of [imminent] danger,"⁵² yet it ignored the psychological impact of being a gang member.⁵³

C. Requirement of Actual and Reasonable Belief

The test for self-defense consists of a subjective element and an objective element. That is, the defendant must have an actual belief in the need to defend himself against imminent harm, and the defendant's belief in the need to defend himself against imminent harm must be justified "from the point of view of a reasonable person in the position of [the] defendant."⁵⁴ If a defendant satisfies both of these requirements, he will be exonerated.⁵⁵

48. *See id.*

49. *See id.*

50. *See Humphrey*, 13 Cal. 4th at 1085–1089, 921 P.2d at 8–11, 56 Cal. Rptr. 2d at 150–52.

51. In *Humphrey*, the victim did not appear any more or less likely to use lethal force on that particular day, at that particular moment, than he was on other occasions. *See id.* at 1077, 921 P.2d at 3, 56 Cal. Rptr. 2d at 144. Similarly, in *Romero*, although the violence could have easily escalated, it had not yet done so. *See Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823.

52. *Humphrey*, 13 Cal. 4th at 1084, 921 P.2d at 8, 56 Cal. Rptr. 2d at 149.

53. *Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823.

54. *See Humphrey*, 13 Cal. 4th at 1083, 921 P.2d at 6–7, 56 Cal. Rptr. 2d at 148 (citing *People v. McGee*, 31 Cal. 2d 229, 238, 187 P.2d 706 (1947)).

55. *See McGee*, 31 Cal. 2d 229, 187 P.2d 706.

“If the belief subjectively exists but is objectively unreasonable, there is ‘imperfect self-defense.’”⁵⁶ In cases of imperfect self-defense, the defendant has acted without malice and can be convicted of manslaughter, but not murder.⁵⁷

1. Subjective test for actual belief

In a homicide case, the subjective element of self-defense requires that a defendant have an honest belief that his life is in imminent danger,⁵⁸ and he must act based on that fear alone.⁵⁹ Evidence of the defendant’s circumstances and mental state are considered.⁶⁰

a. factual evidence of actual belief

Defendants who claim self-defense are required to prove their actual state of mind in order to show their belief in the need to defend.⁶¹ Accordingly, a defendant is entitled to present evidence to corroborate his contention that he was in actual fear for his life.⁶² Character evidence, evidence of threats from third parties, and evidence of the mental state of the defendant are all relevant to show a defendant’s belief in imminent harm.⁶³ In sum, the defendant may present evidence designed to convince the jury that, under the circumstances, he believed that he was in sufficient danger to warrant the use of deadly force.⁶⁴

56. *Humphrey*, 13 Cal. 4th at 1082, 921 P.2d at 6, 56 Cal. Rptr. 2d at 147–148.

57. *See id.*

58. *See In re Christian S.*, 7 Cal. 4th 768, 773, 872 P.2d 574, 576, 30 Cal. Rptr. 2d 33, 35 (1994).

59. *See* CAL. PENAL CODE § 198 (West 1999 & Supp. 2002).

60. *See, e.g., Humphrey*, 13 Cal. 4th at 1085–89, 921 P.2d at 8–11, 56 Cal. Rptr. 2d 150–52 (stating that the character, history and perception of the defendant should be considered in determining the defendant’s honest and reasonable belief of fear for her life).

61. *See id.* at 1082, 921 P.2d at 6, 56 Cal. Rptr. 2d at 147.

62. *See People v. Davis*, 63 Cal. 2d 648, 656, 408 P.2d 129, 133, 47 Cal. Rptr. 801, 805 (1965).

63. *See People v. Minifie*, 13 Cal. 4th 1055, 1067, 920 P.2d 1337, 1344, 56 Cal. Rptr. 2d 133, 139 (1996).

64. *See People v. Minifie*, 13 Cal. 4th 1055, 1066, 920 P.2d 1337, 1342–43, 56 Cal. Rptr. 2d 133, 138 (1996). *See id.* at 1067, 920 P.2d at 1344, 56 Cal. Rptr. 2d at 138.

b. factual evidence of actual belief in battered women's syndrome cases

The same requirements of actual and reasonable belief in the need to defend against imminent harm apply in cases involving battered women's syndrome. However, expert evidence can be considered in determining the defendant's actual belief. For example, in *People v. Aris*, the trial court admitted expert evidence of battered women's syndrome to support the defendant's actual belief in imminent harm.⁶⁵ The court of appeal stated that the evidence was relevant to the defendant's subjective mental state, the first element of a claim of self-defense.⁶⁶ In addition, the court of appeal held that the admission of expert testimony was relevant "as to how the defendant's particular experiences as a battered woman affected her perceptions of danger, its imminence, and what actions were necessary to protect herself."⁶⁷

2. Objective test for reasonable belief

The objective or "reasonableness" element of self-defense looks to the perceptions and actions of the reasonable person in determining whether or not a defendant's actions are warranted.⁶⁸ This is the same hypothetical "reasonable person" test that the court utilizes in many cases dealing with torts or contracts. When determining whether an action is objectively reasonable, we ask whether a reasonable person, placed in the same circumstances and

65. See 215 Cal. App. 3d 1178, 1197, 264 Cal. Rptr. 167, 179–80 (1989).

66. See *id.*

67. *Id.* at 1198, 264 Cal. Rptr. at 180. However, the court of appeal in *Aris* held that although battered women's syndrome evidence was admissible to prove the actual or honest belief element of perfect self-defense, it was not admissible to prove the reasonableness element. See *id.* at 1199, 264 Cal. Rptr. at 180–81. The California Supreme Court reversed that position when it ruled that battered women's syndrome evidence was also admissible to prove objective belief in *Humphrey* in 1996. *Humphrey*, 13 Cal. 4th at 1085–89, 921 P.2d at 8–11, 56 Cal. Rptr. 2d 150–52. The reasonableness element now examines both the individual's perceptions and actions. See *id.*

68. See *Minifie*, 13 Cal. 4th at 1065–66, 920 P.2d at 1342–43, 56 Cal. Rptr. 2d at 138.

with the same knowledge as the defendant, would have acted in the same manner.⁶⁹

The objective test is based on appearances. A defendant's actions are not evaluated from his perspective, but from the perspective of the reasonable person standing in his shoes. For example, in *People v. Minifie*, the defendant killed another man because he feared that the decedent would seek retribution for the death of his associate.⁷⁰ The court held that the test for objective reasonableness includes "how the situation appeared to the *defendant*, not the victim" and allowed the jury to consider the defendant's perception of the situation in evaluating how a reasonable person would have acted.⁷¹ This was "[b]ecause [j]ustification does not depend upon the existence of actual danger but rather depends on appearances."⁷²

a. individualizing the objective element of self-defense

Reasonableness is generally measured by examining how a reasonable person would behave when placed in the shoes of the defendant. The present dilemma involves just how much of the defendant's knowledge, information, and experience should be attributed to the reasonable person before evaluating how he would react in a given situation. The challenge is to find a clear distinction between how a reasonable person in the position of a gang member would act, compared to how a reasonable gang member would act. Despite the difficulty, courts have been careful to draw the distinction.⁷³

69. See *Humphrey*, 13 Cal. 4th at 1082–83, 921 P.2d at 6, 56 Cal. Rptr. 2d at 148.

70. See *Minifie*, 13 Cal. 4th at 1055, 920 P.2d at 1337, 56 Cal. Rptr. 2d at 133.

71. *Id.* at 1068, 920 P.2d at 1344, 56 Cal. Rptr. 2d at 139–40.

72. *Id.* (citing *People v. Clark*, 130 Cal. App. 3d 371, 377, 181 Cal. Rptr. 682, 685 (1982)); see also CALJIC § 5.51 (6th ed. 2002) ("If the defendant kills an innocent person, but circumstances made it reasonably appear that the killing was necessary in self-defense, that is tragedy, not murder.") (internal quotations omitted).

73. See, e.g., *People v. Romero*, 69 Cal. App. 4th 846, 81 Cal. Rptr. 2d 823 (1999) (holding that the role of street fighters in the Hispanic culture is irrelevant in determining whether the defendant actually believed he was in imminent danger of death).

The dilemma is illustrated in *People v. Romero*, where the defendant killed a rival gang member.⁷⁴ Refusing to admit the testimony of a professor who was an expert in Hispanic culture, the court affirmed the lower court's decision that the proposed testimony was "clearly irrelevant."⁷⁵ The California Supreme Court agreed with the trial court, stating that it was "not prepared to sanction a 'reasonable street fighter standard.'"⁷⁶ The court dismissed sociological evidence concerning the defendant's state of mind, stating that because the defendant was unable to present evidence that he was in fear for his life or his brother's life, the evidence could not be used to prove that he had either an objective or subjective fear for his life.⁷⁷

The decision to refuse to admit expert testimony in *Romero* contradicts the *Minifie* principle of allowing the jury to use the knowledge, information, and experience of the defendant when considering whether the defendant thought harm was imminent⁷⁸ In *Minifie*, the court stated that what mattered in determining imminence is how the situation appears to the defendant.⁷⁹

b. individualizing the reasonableness test in battered women's syndrome cases

In battered women's syndrome cases, the standard for admitting evidence of the defendant's actual awareness (subjective evidence) to prove the objective element of self-defense is dramatically different from the standard in *Romero*.⁸⁰ The objective test for battered women now includes a much larger subjective component. For example, in *Humphrey*, the court stated that a jury *should* consider some degree of individualized experiences of the defendant when

74. *See id.*

75. *Id.* at 852 n.2, 81 Cal. Rptr. 2d at 826 n.2.

76. *Id.* at 848, 81 Cal. Rptr. 2d at 824 (quoting the trial court).

77. *See id.* at 855, 81 Cal. Rptr. 2d at 828.

78. *See Minifie*, 13 Cal. 4th at 1068, 920 P.2d at 1334, 56 Cal. Rptr. 2d at 139.

79. *See id.*

80. *See Romero*, 69 Cal. App. 4th at 852, 81 Cal. Rptr. 2d at 826.

making an evaluation of what a reasonable person in the defendant's circumstances would view as imminent.⁸¹

In *Humphrey*, the court held that “[i]n determining whether a reasonable person *in defendant's position* would have been aware of the risks, the jury should be given relevant facts as to what defendant knew, including his actual awareness of those risks.”⁸² The court stated, “Although the ultimate test of reasonableness is objective, in determining whether a reasonable person in defendant's position would have believed in the need to defend, the jury must consider all of the relevant circumstances in which defendant found herself.”⁸³

Thus, the California Supreme Court held that the court in *People v. Aris* was incorrect when it precluded admission of individualized evidence of the defendant's status as a battered woman for purposes of the objective test.⁸⁴ In *Humphrey*, the court redefined how the objective standard was applied. The court ruled that the objective test in a battered women's syndrome case is how the reasonable person would react in the position of a battered woman, knowing what she knows and reacting to the circumstances in light of her experiences.⁸⁵ The court held that the trial court erred in “not admitting the testimony to show how the defendant's particular experiences as a battered woman affected her perceptions of danger, its imminence, and what actions were necessary to protect herself.”⁸⁶ The court stated in dicta that previous cases “too narrowly interpreted the reasonableness element . . . [and] failed to consider that the jury, in determining objective reasonableness, must view the situation from the *defendant's perspective*.”⁸⁷

The court further clarified this point in *People v. Jaspas*, stating that battered women's syndrome “is relevant to the question of

81. *See Humphrey*, 13 Cal. 4th at 1088–89, 921 P.2d at 10, 56 Cal. Rptr. 2d at 152.

82. *Id.* at 1083, 921 P.2d at 7, 56 Cal. Rptr. 2d at 148.

83. *Id.*

84. *See id.* at 1085, 921 P.2d at 8, 56 Cal. Rptr. 2d at 150–51; *cf. Aris*, 215 Cal. App. 3d at 1197, 264 Cal. Rptr. at 179.

85. *See Humphrey*, 13 Cal. 4th at 1084, 921 P.2d at 7–8, 56 Cal. Rptr. 2d at 149.

86. *Id.* 13 Cal. 4th at 1085, 921 P.2d at 8, 56 Cal. Rptr. 2d at 150 (quoting *Aris*, 215 Cal. App. 3d at 1197, 264 Cal. Rptr. at 179) (internal quotations omitted).

87. *Id.* at 1086, 921 P.2d at 8, 56 Cal. Rptr. 2d at 150.

whether defendant's actual belief is reasonable."⁸⁸ First, escalating violence can cause a woman to become "increasingly sensitive to the abuser's behavior,"⁸⁹ which is relevant to determining whether a defendant might reasonably believe that her life was in imminent danger even though the attacker might not, at that moment, be an overt threat to the battered woman's safety. Second, the expert's testimony might be used to provide the jury with evidence that a battered woman might be able to more accurately predict the likelihood and extent of a forthcoming attack.⁹⁰

Since *Humphrey*, the courts allowed the presentation of evidence of battered women's syndrome to prove both the subjective and the objective elements of fear of imminent harm.⁹¹ This has resulted in blurring the lines between a reasonable person in the shoes of a battered woman and a reasonable battered woman.

*c. uneven treatment of individualized traits
in the objective test*

It is unclear why the courts admit evidence of battered women's syndrome in such a broad manner, yet decline to admit similar evidence for many other factors affecting reasonableness. Current case law is murky as to why the courts have developed this dichotomy.

California's legislature has assured the admission of testimony in battered women's syndrome cases by enacting California Evidence Code section 1107, which specifically states that evidence of battered women's syndrome should be admitted to prove its "physical, emotional, or mental effects upon the beliefs, perceptions, or behavior of victims of domestic violence."⁹² Section 1107 clearly supports the use of evidence of battered women's syndrome for the subjective test.⁹³ However, the courts have also used it as a vehicle

88. 98 Cal. App. 4th 99, 108, 119 Cal. Rptr. 2d 470, 476 (2002).

89. *Humphrey*, 13 Cal. 4th at 1086, 921 P.2d at 8-9, 56 Cal. Rptr. 2d at 150.

90. *See id.* at 1080, 921 P.2d at 9, 56 Cal. Rptr. 2d at 150.

91. *People v. Jaspas*, 98 Cal.App.4th 99, 119 Cal. Rptr. 2d 470 (2002).

92. CAL. EVID. CODE § 1107(a) (West 1995 & Supp.2003).

93. *See id.*

through which to consider a battered woman's individualized traits in applying the objective test.⁹⁴

D. Imperfect Self-Defense

A defendant who establishes a subjective belief, but *not* an objective belief, in the need to defend herself is entitled to plead imperfect self-defense. The doctrine of imperfect self-defense assumes that the defendant acted without malice aforethought, thereby preventing the defendant from being convicted of murder.⁹⁵ The defendant can be found guilty of either voluntary manslaughter (if the defendant had intent to kill at the time of the killing), or involuntary manslaughter (if the defendant did not have intent to kill).⁹⁶

1. Imperfect self-defense after the elimination of the diminished capacity defense

Although the diminished capacity defense was eliminated by statute,⁹⁷ imperfect self-defense remains a viable defense.⁹⁸ Although the California Legislature precluded a jury from considering the defendant's capacity to form criminal intent, "it did not preclude jury consideration of mental condition in deciding whether or not a defendant *actually* formed the requisite criminal intent."⁹⁹

In the matter of *In re Christian S.*, the California Supreme Court reaffirmed the viability of imperfect self-defense following the statutory changes.¹⁰⁰ The court reviewed the legislative record and concluded that the California Legislature did not intend to alter the

94. See, e.g., *Romero*, 69 Cal. App. 4th at 853, 81 Cal. Rptr. 2d at 826–27.

95. See *People v. Humphrey*, 13 Cal. 4th 1073, 1082, 921 P.2d 1, 6, 56 Cal. Rptr. 2d 142, 147–48 (1996).

96. See *id.*

97. See CAL. PENAL CODE § 25(a) (West 1999) (abolishing the defense of diminished capacity); CAL. PENAL CODE § 28(a) (making evidence of mental disease, mental defect, or mental disorder inadmissible to show or negate the capacity to form any mental state).

98. See, e.g., *People v. Gregory*, 101 Cal. App. 4th 1149, 1169, 124 Cal. Rptr. 2d 776, 791 (2002), *cert. granted*, 58 P.3d 928, 127 Cal. Rptr. 2d 799 (Cal. 2002) (exploring the doctrine of diminished capacity).

99. *Id.*

100. 7 Cal. 4th 768, 771, 872 P.2d 574, 575, 30 Cal. Rptr. 2d 33, 34 (1994).

doctrine of imperfect self-defense when it eliminated the diminished capacity defense.¹⁰¹

The defendant in *Christian S.* was a minor who sought review of his conviction for second-degree murder. The trial court rejected the defendant's claims of self-defense and imperfect self-defense.¹⁰² It concluded that the killing would have constituted second-degree murder had it been committed by an adult, and held that there was inadequate provocation to find the defendant guilty of voluntary manslaughter.¹⁰³ The trial court failed to state whether it rejected imperfect self-defense on the basis that it was no longer good legal doctrine or because the court did not attribute a subjective belief in the need for self-defense to the defendant.

The California Supreme Court reversed and clarified the doctrine of imperfect self-defense.¹⁰⁴ In holding that the doctrine of imperfect self-defense survived the amended statutory changes, the supreme court stated, "When the trier of fact finds that a defendant killed another person because the defendant actually but unreasonably believed he was in imminent danger of death or great bodily injury, the defendant is deemed to have acted without malice and cannot be convicted of murder."¹⁰⁵

2. Imperfect self-defense as a result of delusion

On November 26, 2002, the California Supreme Court granted review in the case of *People v. Gregory*.¹⁰⁶ In *Gregory*, the defendant's actual belief in the need to defend himself was based on his own delusion.¹⁰⁷ The defendant was initially found incompetent to stand trial.¹⁰⁸ He suffered from schizophrenia and a resulting paranoid delusion that several individuals intended to kill him.¹⁰⁹ Gregory was committed to a state hospital until his competency was

101. *See id.*

102. *See id.* at 772, 872 P.2d at 575–76, 30 Cal. Rptr. 2d at 34–35.

103. *See id.*

104. *See id.* at 783, 872 P.2d at 583, 30 Cal. Rptr. 2d at 42.

105. *Id.*

106. 101 Cal. App. 4th 1149, 124 Cal. Rptr. 2d 776 (2002), *cert. granted*, 58 P.3d 928, 127 Cal. Rptr. 2d 799 (2002).

107. *See id.* at 1155, 124 Cal. Rptr. 2d at 779–780.

108. *See id.*

109. *See id.*

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restored.¹¹⁰ At his subsequent trial, he pled no contest to a charge of second-degree murder.¹¹¹

The trial court later ruled that the defendant had not been advised of the possible defense of imperfect self-defense.¹¹² Consequently, the court vacated the judgment of conviction and set aside the no contest plea.¹¹³ However, the court of appeal reversed, holding that imperfect self-defense must be based on a mistake of fact, not a delusion.¹¹⁴

The court of appeal reviewed de novo the issue of whether a delusional belief of imminent harm can satisfy imperfect self-defense.¹¹⁵ The court stated that based on *Christian S.*, imperfect self-defense is applicable only when a defendant acts as the result of an unreasonable mistake of *fact*, and *not* on the basis of a delusion.¹¹⁶ The court of appeal in *Gregory* based this distinction on the California Supreme Court's statement that a defendant lacks malice if "he acted under an unreasonable mistake of fact—that is, the need to defend himself against imminent peril of death or great bodily harm."¹¹⁷

The court of appeal in *Gregory* concluded:

[A] mistake of fact is predicated upon a negligent perception of facts, not, as in the case of a delusion, a perception of facts not grounded in reality. A person acting under a delusion is not negligently interpreting actual facts; instead, he or she is out of touch with reality. That may be insanity, but it is not a mistake as to any fact.¹¹⁸

The defendant did not present facts sufficient to prove that he experienced delusion.¹¹⁹ The court of appeal held that the imperfect

110. *See id.* at 1154, 124 Cal. Rptr. 2d at 779.

111. *See id.*

112. *See id.*

113. *See id.*

114. *See id.* at 1172, 124 Cal. Rptr. 2d at 793.

115. *See id.* at 1173, 124 Cal. Rptr. 2d at 794.

116. *See id.* at 1172, 124 Cal. Rptr. 2d at 793.

117. *Gregory*, 101 Cal. App. 4th at 1173, 124 Cal. Rptr. 2d at 793 (citing *Christian S.*, 7 Cal. 4th at 779 n.3, 872 P.2d at 580 n.3, 30 Cal. Rptr. 2d 39 at n.3).

118. *Gregory*, 101 Cal. App. 4th at 1172, 124 Cal. Rptr. 2d at 793.

119. *See id.* at 1178, 124 Cal. Rptr. 2d at 798.

self-defense doctrine did not apply in this circumstance because a defendant must present facts to corroborate actual belief to adequately support a claim of imperfect self-defense.¹²⁰ It will be interesting to hear whether the California Supreme Court will allow the imperfect self-defense doctrine to be based on delusion in view of the trend towards allowing a defendant's perceptions to factor into the objective test, as in the case of battered women.

3. Jury instructions on imperfect self-defense

A court has a duty to instruct the jury on the theory of imperfect self-defense whenever there is evidence sufficient to support a self-defense claim.¹²¹ This is because “[t]he subjective elements of self-defense and imperfect self-defense are identical. Under each theory, the [defendant] must actually believe in the need to defend himself against imminent peril to life or great bodily injury.”¹²²

For example, in *People v. Viramontes*, the defendant was accused of murdering the victim while they were attending a party.¹²³ The defense presented evidence at trial that indicated that the defendant shot the victim because the defendant felt threatened by him.¹²⁴ However, during the trial, the defense never mentioned the theory of imperfect self-defense.¹²⁵ When the trial court considered which jury instructions were appropriate, it erroneously interpreted California Jury Instruction section 5.17¹²⁶ to be limited to instances when the defendant claims an actual, but unreasonable fear of death

120. *See id.* at 1174, 124 Cal. Rptr. 2d at 795.

121. *See People v. Viramontes*, 93 Cal. App. 4th 1256, 1262, 115 Cal. Rptr. 2d 229, 232 (2001).

122. *Id.*

123. *See id.* at 1259, 115 Cal. Rptr. 2d at 230.

124. *See id.* at 1263, 115 Cal. Rptr. 2d at 233.

125. *See id.* at 1262, 115 Cal. Rptr. 2d at 232.

126. CALJIC § 5.17 (6th ed. 2002) states in part:

A person, who kills another person in the actual but unreasonable belief in the necessity to defend against imminent peril to life or great bodily injury, kills unlawfully, but does not harbor malice aforethought and is not guilty of murder. This would be so even though a reasonable person in the same situation seeing and knowing the same facts would not have had the same belief. Such an actual but unreasonable belief is not a defense to the crime of . . . manslaughter.

or great bodily injury.¹²⁷ The court of appeal found the trial court's reasoning faulty, holding that evidence which supports a claim of self-defense necessarily supports a claim of imperfect self-defense.¹²⁸ The court of appeal held that the imperfect self-defense instruction should have been given.¹²⁹

4. Constitutional right to present evidence of imperfect self-defense

A defendant has a constitutional right to present a defense, including self-defense.¹³⁰ In *DePetris v. Kuykendall*, the Ninth Circuit held that a defendant must be allowed to present evidence of actual belief in the need to defend.¹³¹

In *DePetris*, the defendant was convicted of first-degree murder in the death of her husband.¹³² At trial, she was not permitted to present evidence related to the existence or content of her husband's journal, which the trial court excluded as irrelevant.¹³³ The journal, which the defendant had read prior to the killing, contained the victim's own "chilling account" of his prior physical abuse of his homosexual companion, his stepdaughter, and numerous beatings of his first wife.¹³⁴

The court held that excluding the journal unconstitutionally impeded the defendant's "ability to defend [herself] against the charges against her."¹³⁵ In addition, the court stated in dicta that evidence of the diary was also clearly admissible under California Evidence Code section 1107.¹³⁶

127. See *Viramontes*, 93 Cal. App. 4th at 1262, 15 Cal. Rptr. 2d at 232.

128. See *id.*, 15 Cal. Rptr. 2d at 233.

129. See *id.*

130. See *DePetris v. Kuykendall*, 239 F.3d 1057, 1063 (9th Cir. 2001).

131. See *id.* at 1062–63.

132. See *id.* at 1060.

133. See *id.* at 1060–61.

134. *Id.* at 1059–61.

135. *Id.* at 1065.

136. See *id.* at 1061.

5. Jury instructions for imperfect self-defense for battered women's syndrome cases

Battered women's syndrome evidence is generally relevant for three different purposes in murder cases.¹³⁷ First, it helps the jury to determine the credibility of the defendant in evaluating the defendant's claim of self-defense and dispels "commonly held misconceptions about battered women."¹³⁸ Second, it is relevant to evaluate whether the defendant held an honest or actual belief in the need to defend against imminent harm.¹³⁹ Finally, it is relevant in a murder case to prove reasonableness under the objective test.¹⁴⁰

In *Jaspar*, the defendant was convicted of second-degree murder in the death of her boyfriend, whom she shot in the back of the head.¹⁴¹ The court used a modified version of California Jury Instructions section 9.35.1, instructing the jury that evidence of battered women's syndrome can be considered for four limited purposes:

1) that the [d]efendant's reactions, as demonstrated by the evidence, are not inconsistent with her having been a victim of domestic violence; 2) the beliefs, perception or behavior of victims of domestic violence; 3) proof relevant to the believability of the defendant's testimony; 4) *whether the defendant actually and reasonably believed in the necessity to use force to defend herself against imminent peril to life* In assessing reasonableness, the issue is whether a reasonable person in the [d]efendant's circumstances would have seen a threat of imminent injury or death, and not whether killing the alleged abuser was reasonable in the sense of being an understandable response to ongoing abuse. An act that appeared to be an understandable

137. See *People v. Jaspar*, 98 Cal. App. 4th 99, 107, 119 Cal. Rptr. 2d 470, 475 (2002).

138. *Id.* (quoting *People v. Humphrey*, 13 Cal. 4th 1073, 1087, 921 P.2d 1, 9, 56 Cal. Rptr. 2d 142, 150 (1996)).

139. See *id.*

140. See previous discussion of the objective test for reasonableness *supra* Part IX.C.

141. See *Jaspar*, 98 Cal. App. 4th at 102, 119 Cal. Rptr. 2d at 471.

response is not necessarily [an] act that was responsible under the circumstances.¹⁴²

After considering whether the final combined instruction precluded a finding of imperfect self-defense, the court held that although the fourth instruction read in isolation might have been confusing, the error was harmless.¹⁴³ The court found that the arguments of counsel clarified any potential confusion.¹⁴⁴ However, the court suggested that the language of the fourth instruction should be modified to read “whether the defendant actually . . . believed in the necessity to use force to defend herself against imminent peril to life . . . and whether such belief was reasonable or unreasonable.”¹⁴⁵

E. Conclusion

Although the basic definitions and tests used in the area of self-defense were established hundreds of years ago, they continue to develop towards a more permissive inclusion of evidence of the defendant’s knowledge, information, and experience. The courts have continued to utilize the two-prong test for actual and reasonable belief in the need to defend against imminent peril. However, at least in the case of battered women, the courts have expanded the amount and types of knowledge, information, and experiences that are allowed to be attributed to the defendant before the reasonable person standard is applied.¹⁴⁶

Since the California Supreme Court granted certiorari in *Gregory*, it is unclear whether imperfect self-defense can be based on delusion or whether imperfect self-defense is limited to mistakes of fact.¹⁴⁷ In cases of battered women’s syndrome, it is clear that the defendant’s knowledge, information, and experiences are relevant and admissible for both evaluating imminent harm and defining the

142. *Id.* at 108–09, 119 Cal. Rptr. 2d at 476–77. *Cf.* CALJIC § 9.35.1 (6th ed. 2002).

143. *See Jasper*, 98 Cal. App. 4th at 110, 119 Cal. Rptr. 2d at 477.

144. *See id.* at 111, 119 Cal. Rptr. 2d at 478.

145. *Id.* at 111 n.6, 119 Cal. Rptr. 2d at 479 n.6 (citations omitted).

146. *See, e.g.,* *People v. Humphrey*, 13 Cal. 4th 1073, 1082–83, 921 P.2d 1, 6, 56 Cal. Rptr. 2d 142, 148 (1996) (holding that defendant’s subjective belief in the need to defend should be considered by the jury).

147. *See People v. Gregory*, 101 Cal. App. 4th 1149, 124 Cal. Rptr. 2d 776 (2002) *cert. granted*, 1259, 115 Cal. Rptr. 2d at 230 (Cal. 2002).

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objective element of self-defense. But this thinking has not yet been extended to other similarly situated defendants including the mentally ill, the developmentally disabled, and battered children. The courts are unwilling to recognize individualized traits in the objective test for gang members, street fighters, and others.¹⁴⁸

As this area of the law develops, it will be important for the courts to clearly define what evidence of individualized traits and experiences should be attributed to the reasonable person for purposes of the objective element of self-defense. In addition, the courts need to further define how a defendant's viewpoint affects a finding of imminent harm.

148. *See, e.g.,* People v. Romero, 69 Cal. App. 4th 846, 854, 81 Cal. Rptr. 2d 823, 827 (1999) (unwilling to apply reasonable objective test from the perspective of gang members and street fighters).