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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE V. HENDRICKS,

Defendant and Appellant.

B236488

(Los Angeles County  
Super. Ct. No. NA086442)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Arthur Jean Jr., Judge. Affirmed.

Landra E. Rosenthal, 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, Scott A. Taryle and John Yang,  
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jesse V. Hendricks appeals his conviction for second degree murder. The trial court sentenced Hendricks to a term of 36 years to life in prison. Hendricks contends the court erred by failing to instruct the jury on involuntary manslaughter and by excluding evidence. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *People's evidence.*

Viewed in accordance with the usual rules governing appellate review (*People v. Johnston* (2003) 113 Cal.App.4th 1299, 1303-1304; *People v. Robinson* (1997) 53 Cal.App.4th 270, 273), the evidence relevant to the issues presented on appeal was as follows. In the summer of 2010, Jennifer Gallagher was appellant Hendricks's fiancé. They lived together in a house located on Irving Street in Los Angeles. Gallagher was a methamphetamine addict and would sometimes disappear for days at a time, leading to problems in her relationship with Hendricks. Hendricks was a drug user as well.

Gallagher was friends with the victim, Patrick Ho. Ho went by the nickname "Chino" and lived in a studio apartment on Carson Street in Torrance. Gallagher and Ho were close confidantes. They had talked about having a sexual relationship and were attracted to each other. Hendricks was suspicious of their relationship and disapproved of them spending time together.

Gallagher was also friends with Genesis Galaz. According to Gallagher, unbeknownst to Hendricks, she and Galaz were involved in an intimate relationship.<sup>1</sup> Hendricks was suspicious that Gallagher and Galaz were romantically involved and disapproved of their friendship.

During the three months preceding the murder, Ho, Galaz, and Gallagher frequently spent time together using crystal methamphetamine, often at Ho's apartment.

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<sup>1</sup> Galaz denied being involved in a sexual relationship with Gallagher. She testified that although she was attracted to Gallagher, she did not pursue an intimate relationship because she knew Gallagher was engaged to Hendricks.

(i) *The murder.*

By July 30, 2010, Gallagher and Hendricks were still living together but their relationship was deteriorating.<sup>2</sup> On July 31, 2010, Gallagher and Hendricks had been fighting. Galaz and Gallagher went to Ho's apartment during the day and used drugs. Later they returned to the Irving Street apartment and unexpectedly encountered Hendricks. The women arranged to go to Ho's residence to obtain more drugs. Hendricks did not object and decided to join them. At approximately 2:00 a.m. Gallagher drove the trio in her car to an auto shop in Wilmington, where they picked up Ho. Ho emerged from the shop with a bottle of Jack Daniels in his hand. Ho and Hendricks had met only once before. They shook hands and were cordial to one another.

Gallagher drove the group to Ho's apartment. Ho had a roommate, and the men had divided their space by stacking plastic containers down the middle of the apartment.<sup>3</sup> Ho, Gallagher, and Hendricks went to the kitchen to prepare the methamphetamine syringes. Gallagher injected Hendricks with methamphetamine. Hendricks then sat on Ho's bed, watching pornography. Ho went into the bathroom to inject himself with methamphetamine, but had difficulty finding a vein due to his tattoos. He called to Hendricks from the bathroom in a friendly way, and the two men conversed calmly. Hendricks seemed nervous but appeared to be trying to get along with Ho. After conversing with Ho, Hendricks returned to the bed.

At some point Gallagher entered the bathroom with Ho, and the two discussed the fact Hendricks was "tripping." When Gallagher exited the bathroom, Hendricks complained that she had been "blatantly speaking to another guy" right "in front of" him.

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<sup>2</sup> Gallagher variously testified that as of July 31, 2010, she was Hendricks's fiancé and they were living together; she and Hendricks were not physically together; she knew the relationship "needed to end but it hadn't"; she intended to end the relationship, and the pair had "recently separated"; it was "obvious" they would not be able to stay in the same house; the pair was "[not] together at the time"; and they were "fighting" and "for the most part . . . were broken up."

<sup>3</sup> The roommate was not present on the night of July 31, 2010.

As the night wore on, Hendricks repeatedly indicated he was uncomfortable or anxious and wanted to leave. Instead of leaving, however, Gallagher and Galaz rummaged through a box of clothing in the apartment.

Suddenly the women heard Ho yelling, “ ‘Genesis, get him off of me.’ ” They ran around the plastic divider and into the bathroom. Hendricks, who was bigger than Ho, had cornered Ho in the bathroom and was stabbing him with a knife with a jagged, four-inch blade. Ho fell to the ground, screaming. Hendricks pinned Ho to the floor and stabbed him again. Ho did not have anything in his hands and was unable to put up “much of a struggle.” Galaz yelled, “ ‘Jesse, what the fuck are you doing?’ ” Hendricks stopped and looked at Galaz and then resumed his attack on Ho, stabbing more forcefully than before. Galaz pulled Hendricks off Ho, who was bleeding profusely, and called 911. Hendricks left the apartment, taking the keys to Gallagher’s car with him.

(ii) *The investigation.*

Ho died from a combination of blood loss and stab wounds to his liver and both lungs. He had suffered four stab wounds and three incised wounds, including defensive incision wounds on both his hands.

Gallagher had seen the knife used by Hendricks at their Irving Street residence, and had observed Hendricks in possession of it at least once prior to the murder. Gallagher’s keys and the knife were found in the landscaping near Ho’s apartment.

b. *Defense evidence.*

Hendricks testified in his own behalf, as follows. He and Gallagher had argued about Gallagher’s drug use at the end of July 2010. They agreed to meet on July 31, 2010, at the Irving Street house. Gallagher arrived with Galaz, and both women were high. Hendricks and Gallagher agreed that they would go purchase methamphetamine and then drop Galaz off at her residence. Hendricks had no idea the drugs were to be purchased from Ho and would not have “got[ten] in the car” had he known. At Ho’s house Hendricks got high after Gallagher injected him with methamphetamine. There were no problems between him and Ho at first. Hendricks attempted to make small talk about the fact they had both served time in prison, and Ho discussed his pornography

collection. Hendricks became nervous after he observed several knives in Ho's residence, including one that was on the top of the toilet. After Ho apparently ingested additional doses of methamphetamine, Ho's demeanor abruptly changed. He groped himself in a sexual manner and toyed with the knife Hendricks had seen on the toilet. Ho demanded that Hendricks leave the apartment with Galaz, but leave Gallagher behind. Gallagher had previously told Hendricks that Ho had raped her after they used drugs together and she blacked out. Hendricks was afraid Ho had nefarious motives and would harm Gallagher if she stayed behind. He attempted to get Gallagher and Galaz to leave, but they ignored him. While Hendricks was waiting for the women, Ho came out of the bathroom with the knife and said, in an expressionless tone, " 'Get out.' " Ho appeared to be "off the charts high." Hendricks told Ho he would not leave without Gallagher, but Ho said she would be alright. Ho, holding the knife, stepped toward Hendricks. Hendricks grabbed Ho's wrist in an effort to disarm him. He pushed Ho into the bathroom, causing Ho to fall. The knife fell on the floor, and Hendricks picked it up. When Ho stepped toward Hendricks, Hendricks stabbed Ho in the stomach area. Hendricks continued to stab Ho because he was afraid and did not know how badly Ho was hurt. Hendricks denied being armed with a knife or bringing a knife to Ho's house. He also denied intending to kill Ho. Instead, he stabbed Ho in an effort to protect Gallagher and himself. He affirmed that he had not stabbed Ho in a fit of anger or jealousy.

The People impeached aspects of Hendricks's account with portions of his interview with officers. Among other things, during that interview Hendricks did not state that Ho had previously raped Gallagher and did not clearly explain that Ho had stepped toward him with a knife. He declined to answer several questions that might have incriminated him. He admitted stabbing Ho at least four times, twice in the back and once in the stomach. Significant portions of the pretrial interview were consistent with Hendricks's eventual testimony at trial. Hendricks also admitted that a few nights before the stabbing, he had spoken to Ho on the telephone and threatened to "kick [his] ass."

## 2. Procedure.

Trial was by jury. Hendricks was convicted of the second degree murder of Ho. (Pen. Code, § 187, subd. (a).)<sup>4</sup> The jury additionally found Hendricks personally used a deadly and dangerous weapon, a knife, in commission of the murder. (§ 12022, subd. (b)(1).) In a bifurcated proceeding, the trial court found Hendricks had suffered a prior conviction for carjacking (§ 215, subd. (a)) and had served a prior prison term within the meaning of section 667.5, subdivision (b). The court sentenced him to a term of 36 years to life in prison. It imposed a restitution fine, a suspended parole restitution fine, a criminal conviction assessment, and a court security fee. Hendricks appeals.

## DISCUSSION

### 1. *The trial court did not err by omitting an instruction on involuntary manslaughter.*

Hendricks's jury was instructed on first and second degree murder, homicide in self-defense and the defense of another, voluntary manslaughter on an imperfect self-defense theory, and related principles. Hendricks contends the trial court erred by failing to also instruct, sua sponte, on involuntary manslaughter with CALJIC Nos. 8.45 (defining involuntary manslaughter) and 8.46 (defining caution and circumspection). He contends the omission deprived him of his state and federal constitutional rights to due process and a jury trial. We disagree.

A trial court must instruct, sua sponte, on the general principles of law that are closely and openly connected to the facts and that are necessary for the jury's understanding of the case. (*People v. Moya* (2009) 47 Cal.4th 537, 548; *People v. Abilez* (2007) 41 Cal.4th 472, 517; *People v. Breverman* (1998) 19 Cal.4th 142, 154.) Instructions on a lesser included offense must be given only when there is substantial evidence from which the jury could conclude the defendant is guilty of the lesser offense. (*People v. Thomas* (2012) 53 Cal.4th 771, 813; *People v. Manriquez* (2005) 37 Cal.4th

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<sup>4</sup> All further undesignated statutory references are to the Penal Code.

547, 584.) Substantial evidence is evidence that a reasonable jury could find persuasive. (*People v. Benavides* (2005) 35 Cal.4th 69, 102.) In deciding whether there is substantial evidence of a lesser included offense, we do not evaluate the credibility of the witnesses, a task for the jury. (*Manriquez*, at p. 585.) The duty to instruct sua sponte on lesser included offenses is not satisfied by instructing on only one theory of an offense if other theories are supported by the evidence. (*People v. Lee* (1999) 20 Cal.4th 47, 61.) We independently review the question of whether the trial court erred by failing to instruct on a lesser included offense. (*People v. Booker* (2011) 51 Cal.4th 141, 181.)

Involuntary manslaughter is a lesser included offense of murder. (*People v. Thomas, supra*, 53 Cal.4th at p. 813.) It is statutorily defined as a killing occurring during either: (1) the commission of an unlawful act not amounting to a felony, that is, a misdemeanor; or (2) the commission of a lawful act which might produce death, performed in an unlawful manner or without due caution and circumspection. (§ 192, subd. (b); *People v. Manriquez, supra*, 37 Cal.4th at p. 587; *People v. Butler* (2010) 187 Cal.App.4th 998, 1006-1007; *People v. Garcia* (2008) 162 Cal.App.4th 18, 27; *People v. Parras* (2007) 152 Cal.App.4th 219, 227.) Additionally, an unintentional homicide committed in the course of a noninherently dangerous felony may properly support a conviction for involuntary manslaughter if the felony is committed without due caution and circumspection. (*People v. Burroughs* (1984) 35 Cal.3d 824, 835-836, disapproved on other grounds in *People v. Blakeley* (2000) 23 Cal.4th 82, 89; *Butler*, at p. 1007; *Garcia*, at p. 29; *People v. Albritton* (1998) 67 Cal.App.4th 647, 654.) The mens rea for all three types of involuntary manslaughter is criminal negligence. (*Butler*, at p. 1007.) A defendant who, “acting with conscious disregard for life, unintentionally kills in unreasonable self-defense is guilty of voluntary manslaughter rather than the less serious crime of involuntary manslaughter.” (*Blakeley*, at p. 92.) A defendant who kills in unreasonable self-defense may sometimes be guilty of involuntary manslaughter, but not if the killing was committed with a conscious disregard for life. (*People v. Johnson* (2002) 98 Cal.App.4th 566, 575, fn. 10; *Blakeley*, at p. 91.)

Here, the evidence did not support an involuntary manslaughter instruction. Hendricks grabbed a large, “Rambo” style knife and repeatedly and deliberately stabbed Ho in the torso with it, puncturing both Ho’s lungs and his liver, as Ho screamed for help. There was no evidence that would have supported a finding the crime occurred during commission of a misdemeanor, a lawful act other than self-defense, or a noninherently dangerous felony. Repeatedly stabbing Ho amounted to at least assault with a deadly weapon, an inherently dangerous felony. (See, e.g., *People v. Garcia, supra*, 162 Cal.App.4th at p. 28, fn. 4 [assault with a deadly weapon is an inherently dangerous felony]; § 245, subd. (a)(1); § 17.)

Hendricks argues that the jury could have concluded he acted without the intent to kill and without malice, and therefore an involuntary manslaughter instruction was warranted. He urges there was evidence he lacked the intent to kill Ho: he so testified. He hardly knew Ho, he did not want to visit Ho’s apartment, and repeatedly sought to leave before the stabbing. He also posits that there was evidence he acted without malice. He suggests the evidence showed he was attempting to defend himself and Gallagher, and overreacted to a perceived threat. Thus, he theorizes, the jury could have found his attempt to defend himself was lawful, but was carried out in a dangerous or criminally negligent fashion.

Hendricks’s arguments lack merit. In *Manriquez*, the defendant argued the evidence would have supported a finding he shot the victim by mistake, while negligently attempting to defend against a perceived threat. (*People v. Manriquez, supra*, 37 Cal.4th at p. 587.) The court reasoned that the killing, which involved two fatal and three nonfatal gunshot wounds inflicted at close range, could “only be characterized as having been intentional”; even if the first shot was an accident, the defendant admittedly continued shooting as the victim was falling to the ground. “[T]he trial court was not required to instruct the jury on involuntary manslaughter in view of the circumstance that defendant intentionally kept firing his weapon, inflicting at least one other fatal wound.” (*Id.* at p. 588.) The same is true here: Hendricks repeatedly stabbed Ho, inflicting four fatal wounds, at least some of them when Ho was already on the ground, incapacitated.

Furthermore, a defendant who kills in unreasonable self-defense is guilty of involuntary, rather than voluntary, manslaughter only in the narrow instance where the killing took place under circumstances *not* demonstrating conscious disregard for life. (*People v. Blakeley, supra*, 23 Cal.4th at p. 91; *People v. Johnson, supra*, 98 Cal.App.4th at p. 575, fn. 10.) There was no evidence from which the jury could have concluded Hendricks acted *without* a conscious disregard for life. Hendricks stabbed and cut Ho seven times, so forcefully as to puncture both his lungs and his liver; he continued stabbing even after Ho was clearly incapacitated. These actions indisputably demonstrated a conscious disregard for life. Thus, even if the jury concluded Hendricks lacked the intent to kill and acted under the actual but unreasonable belief in the need for self-defense, the crime would have been *voluntary* manslaughter. (*Blakeley*, at p. 92.)

*People v. Garcia, supra*, 162 Cal.App.4th 18, is instructive. There, the defendant struck the victim, Gonzalez, in the face with the butt of a shotgun, causing Gonzalez to fall, hit his head on the sidewalk, and die. The court considered whether a jury could “find Garcia guilty of involuntary manslaughter, rather than second degree murder or voluntary manslaughter, based on Garcia’s testimony he hit Gonzalez in an automatic response to Gonzalez’s lunge at the shotgun and did not aim for Gonzalez’s face and did not intend to kill [him.]” (*Id.* at p. 22.) *Garcia* concluded: “An unlawful killing during the commission of an inherently dangerous felony, even if unintentional, is at least voluntary manslaughter. Because an assault with a deadly weapon or with a firearm is inherently dangerous, the trial court properly concluded the evidence would not support Garcia’s conviction for involuntary manslaughter and, therefore, did not err in declining to instruct the jury on involuntary manslaughter as a lesser included offense of murder.” (*Ibid.*) Similarly, Hendricks’s argument that he stabbed Ho in self-defense when Ho came at him did not support an involuntary manslaughter instruction. (*Id.* at pp. 32-33.)

Even assuming the trial court erred by omitting an involuntary manslaughter instruction—a conclusion we do not accept—any error was harmless. The erroneous failure to instruct on a lesser included offense is an error of California law, and reversal is required only if it appears reasonably probable the defendant would have obtained a more

favorable outcome had the error not occurred. (*People v. Moye, supra*, 47 Cal.4th at pp. 555-556; *People v. Breverman, supra*, 19 Cal.4th at p. 165.) The jury was instructed on, and rejected, the theory that Hendricks acted in self-defense, perfect or imperfect, and convicted him of second degree murder rather than voluntary manslaughter. Therefore it necessarily found he acted with a conscious disregard for human life. (*People v. Manriquez, supra*, 37 Cal.4th at p. 588.)

Moreover, there was strong evidence supporting the second degree murder verdict on both an express and an implied malice theory. The undisputed evidence showed Hendricks stabbed Ho repeatedly, including after Ho was incapacitated and after Galaz asked what he was doing, strongly suggesting an intent to kill. Even if a defendant lacks express malice, that is, the intent to kill, he or she is guilty of second degree murder if the People prove implied malice. (*People v. Garcia, supra*, 162 Cal.App.4th at pp. 26-27.) “Malice will be implied ‘when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for life. [Citations.]’ [Citations.]” (*People v. Taylor* (2010) 48 Cal.4th 574, 623-624; *Garcia*, at pp. 26-27.) It was undisputed that Hendricks deliberately stabbed Ho, conduct that he must have known was dangerous to human life. There was therefore no probability Hendricks would have obtained a more favorable verdict had the court instructed on involuntary manslaughter.

## 2. *Exclusion of defense evidence.*

Hendricks next complains that the trial court erred by excluding the testimony of two proposed defense witnesses: Ho’s roommate, Paul Challender; and a defense drug expert. He contends exclusion of the testimony infringed upon his rights to present a defense, to due process, and to a fair trial. We discern no error.

### a. *Applicable legal principles.*

Only relevant evidence is admissible. (Evid. Code, § 350.) “ ‘Relevant evidence’ means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of

consequence to the determination of the action.” (Evid. Code, § 210; see also *People v. Lee* (2011) 51 Cal.4th 620, 642; *People v. Mills* (2010) 48 Cal.4th 158, 193; *People v. Williams* (2008) 43 Cal.4th 584, 633-634.) Relevant evidence may be excluded, in the trial court’s discretion, if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352; *Lee*, at p. 643.) A trial court has broad discretion in determining whether evidence is relevant and whether Evidence Code section 352 precludes its admission. (*Mills*, at p. 195; *Williams*, at p. 634.) We apply the abuse of discretion standard to a trial court’s rulings on the admissibility of evidence, including those turning on the relevance or probative value of the evidence in question. (*Lee*, at p. 643; *People v. Hamilton* (2009) 45 Cal.4th 863, 930.) “Ordinarily a criminal defendant’s attempt ‘to inflate garden-variety evidentiary questions into constitutional ones [will prove] unpersuasive. ‘As a general matter, the ‘[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense.’ [Citations.] . . . [E]xcluding defense evidence on a minor or subsidiary point does not impair an accused’s due process right to present a defense.’” ’ [Citation.]” (*People v. Thornton* (2007) 41 Cal.4th 391, 443-444.) The erroneous exclusion of evidence requires reversal only if it is reasonably probable that appellant would have obtained a more favorable result had the evidence been allowed. (Evid. Code, § 354; *People v. Richardson* (2008) 43 Cal.4th 959, 1001; *People v. Earp* (1999) 20 Cal.4th 826, 880.)

b. *Exclusion of Challenger’s testimony.*

After Hendricks testified, the defense sought to call Challenger. The trial court asked defense counsel for an offer of proof. Counsel averred Challenger would state that Gallagher and Ho had a sexual relationship, which, in counsel’s view, would have (1) impeached Gallagher’s contrary testimony, and (2) supported the defense theory that Gallagher engineered the meeting between Hendricks and Ho because she wanted Ho to confront Hendricks regarding the domestic violence Hendricks had purportedly committed against her. The trial court excluded Challenger’s proposed testimony on the

grounds it was based on hearsay, was irrelevant, was more prejudicial than probative, and could only impeach Gallagher on a collateral issue.

The trial court's ruling was correct. Any out-of-court statements Challenger heard would have been inadmissible hearsay if offered for their truth. (Evid. Code, § 1200, subd. (a).) Evidence Challenger observed a sexual relationship between Ho and Gallagher would not have been hearsay, but was largely irrelevant. Evidence of the sexual relationship could not have been offered to prove heat of passion: Hendricks had already testified that when he stabbed Ho, he was not angry and did not act in the heat of passion. A showing Gallagher lied when she testified about her relationship with Ho would have impeached her, but only on a collateral matter. A trial court has the “ ‘power to control the presentation of proposed impeachment evidence “ ‘ “to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues.” [Citation.]’ ” ’ ” ( *People v. Riccardi* (2012) 54 Cal.4th 758, 808-809; *People v. Mills, supra*, 48 Cal.4th at p. 195.) Moreover, evidence Gallagher lied about having a sexual relationship with Ho could not have had much impact on the jury's evaluation of her credibility: among other things, she had already admitted being a long-time methamphetamine addict, having a sexual affair with Galaz while engaged to Hendricks, being attracted to and flirting with Ho, repeatedly lying to Hendricks, stealing, doing “unacceptable” things while high, and suffering prior convictions for grand and petty theft.

Hendricks argues that Challenger's testimony would also have shown Gallagher “was responsible for instigating the hostility between appellant and Chino,” a fact he theorizes could have convinced the jury the killing was manslaughter. He posits that evidence Ho planned to confront Hendricks about the purported abuse of Gallagher could have supported the defense position that Ho was the aggressor. There are several problems with this theory. It was highly speculative; defense counsel did not aver Challenger knew Ho planned to confront Hendricks, or that Gallagher had sought to arrange such a confrontation. As noted, Challenger's testimony on this point would have been inadmissible hearsay. (Evid. Code, § 1200, subd. (a).) Gallagher's state of mind

was irrelevant. The proposed testimony was cumulative. Gallagher had already testified that she told Ho about Hendricks's purported physical abuse, and in response Ho offered to "get his friends in the valley to get Jesse." Challenger's reiteration of such a conversation would have served no purpose.

Finally, contrary to Hendricks's contention, the record does not demonstrate that the trial court gave defense counsel an inadequate opportunity to explain the relevance of Challenger's testimony. The evidence was properly excluded.

*c. Exclusion of Dr. McGee.*

After excluding Challenger's testimony, the trial court asked defense counsel, "Any other witnesses?" Defense counsel replied, "Dr. [McGee]. And he won't be available until Tuesday." When the trial court asked what McGee would testify about, defense counsel replied, "He will testify about the effects of methamphetamine on users." The trial court replied, "[a]bsent a better offer of proof than that, we are going to conclude today." Defense counsel responded, "Okay," and did not provide further information about McGee's proposed testimony. During deliberations the jury sent out several questions regarding the role of intoxication in the case.<sup>5</sup>

Hendricks contends that Dr. McGee's testimony was relevant to provide a "clearer picture" of "the impact methamphetamine has upon drug users," including how the drug affected Hendricks's judgment. He contends such testimony was "essential" to the defense, as demonstrated by the jury's questions indicating its focus on the role intoxication played in the crime. The People counter that the court's ruling was proper

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<sup>5</sup> The jury queried: "On Friday, the majority heard intoxication should not be considered as an excuse. Could the role of intoxication please be clarified." The court reread the applicable jury instructions and advised that no act is less criminal due to the perpetrator's voluntary intoxication, but intoxication should be considered in regard to a defendant's formation of a specific intent or other mental state. The court further explained that voluntary intoxication plays no role in the consideration of whether a defendant acted with implied malice or conscious disregard. The jury subsequently asked whether there was a legal definition of "conscious." The court replied that there was no special definition.

because defense counsel provided an inadequate offer of proof, and because presentation of the expert's testimony would have necessitated a brief delay of the trial.

Apart from the delay issue, in our view the court's ruling was correct because defense counsel failed to demonstrate the probative value of the proposed testimony. (See Evid. Code, § 354, subd. (a) [a judgment may not be reversed on the ground of erroneous exclusion of evidence unless the "substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means"].) Defense counsel gave only a vague and general description of the expert's testimony, that is, that he would "testify about the effects of methamphetamine on users." Counsel did not offer any specifics, and did not describe how such evidence was directly relevant to the defense. Gallagher and Hendricks had both explained, during their testimony, how methamphetamine affected them. It was not clear how the expert's testimony would have added to the testimony already presented. On appeal, Hendricks similarly fails to specify the substance of the expert's proposed testimony or give particulars regarding how it would have assisted the defense. Instead, appellant relies on conclusory assertions that the testimony would have been "helpful" to "shed some light on appellant's use of methamphetamine and its likely impact on his state of mind."

Given the vague nature of the proposed testimony, we cannot say the trial court erred. Nor is Hendricks's argument that the expert's testimony would have been relevant to "the motives of the witnesses with regard to their testimony" persuasive. In light of the trial evidence, we do not see the connection. Finally, Hendricks is incorrect when he urges that the trial court provided an inadequate opportunity for defense counsel to describe the relevance of McGee's testimony. To the contrary, the court's statement invited further explanation, but defense counsel declined to provide it.

DISPOSITION

The judgment is affirmed.

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

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.