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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM THOMAS SCHMITZ,

Defendant and Appellant.

C061054

(Super. Ct. No.  
CM023887)

Defendant William Thomas Schmitz was sentenced to 40 years to life in state prison after he pleaded no contest to possession of methamphetamine and marijuana for sale, and a jury convicted him of second degree murder with a firearm use enhancement.

Defendant appeals contending, in addition to several instructional errors and a defective verdict form on the firearm enhancement, the trial court erred by permitting inquiry

regarding compensation paid to a defense expert witness. We affirm the judgment.

### FACTS AND PROCEEDINGS

In May 2005, defendant and his on-again, off-again girlfriend, Jennifer, went to a friend's birthday party. The victim, Chad Keichler, also attended the party. Keichler saw Jennifer and told her she looked good. Jennifer responded by telling Keichler that defendant was her boyfriend, to which Keichler replied, "I don't give a fuck about your boyfriend." Later during the party, Keichler made some vulgar remarks to Jennifer which upset defendant. Keichler continued to make inappropriate remarks to other partygoers, further upsetting defendant and prompting him to leave the party and wait for Jennifer in the car. Defendant later returned to the party and said something to Jennifer about wanting to stab Keichler. Because defendant was "really angry," Jennifer decided it was time to go and she and defendant left the party.

In the weeks following the party, defendant continued to talk about the incident, repeating the same story over and over again and telling Jennifer he did not like Keichler.

Sometime after the party, Keichler's friend, Joseph, crossed paths with defendant at a bar. When Joseph said he knew Keichler, defendant said, "I want to kill that motherfucker when I see him." Joseph did not take the threat seriously, but later told Keichler what defendant said.

In October 2005, Keichler and some friends, including Allen W., were sitting at the Normal Street Bar having a drink. Defendant was also sitting at the bar. At some point, Allen heard defendant say, "He's nothing but a bitch." Allen asked, "Excuse me? You talking to me?" and defendant replied, "If I was talking to you, I think you'd know it." A few minutes later, defendant walked over to Keichler, who was sitting further down the bar, and began an unfriendly "exchange of words" with him.

Defendant and Keichler eventually walked outside the bar where the verbal exchange continued. Anthony M. followed them outside, as did Allen a few minutes later. Allen heard Keichler and Anthony arguing and "talking shit back and forth." Heather F., who was standing outside the bar with defendant's roommate, noticed defendant, Keichler and Anthony in a heated conversation. Heather saw defendant say something in Keichler's ear and heard Keichler exclaim, "You're going to shoot me, mother-----?" Defendant left and Keichler, who was "extremely upset," said, "I just got my life threatened over a bunch of bullshit." Soon thereafter, a Durango pulled up to the corner and stopped. Defendant got out, moved quickly to where Keichler was standing and shot him underneath his jaw with a small revolver. Defendant then ran back to the Durango and sped away. Keichler was pronounced dead shortly after paramedics arrived.

Defendant entered a plea of no contest to possession of methamphetamine for sale (Health & Saf. Code, § 11378) and possession of marijuana for sale (Health & Saf. Code, § 11359).

He was tried by a jury on the remaining charge of murder (Pen. Code, § 187, subd. (a)), and found guilty of the lesser included offense of second degree murder. The jury found true the special allegation that, in the commission of the murder, "defendant personally used a firearm, in violation of Penal Code sections 12022.53(b), 12022.53(c), and 12022.53(d)."

The court sentenced defendant to 15 years to life for the murder conviction, plus 25 years to life for the gun enhancement (Pen. Code, § 12022.53, subd. (d)) (hereafter § 12022.53(d)), for an aggregate term of 40 years to life in state prison.

Defendant filed a timely notice of appeal.

## DISCUSSION

### I

#### *Jury Instruction*

The defense presented at trial centered on defendant's claimed mental defect or disorder. Defense expert Dr. Joseph Chong-Sang Wu testified that defendant had a "golf ball-sized cyst or lesion," otherwise known as an arachnoid cyst, on the temporal lobe of his brain. According to Dr. Wu, the arachnoid cyst eroded bones in defendant's brain and compressed his temporal lobe, causing damage to his brain. Dr. Wu opined that the damage caused by the arachnoid cyst compromised defendant's ability to control his aggressive impulses.

The jury was instructed with the following modified versions of two pinpoint instructions requested by defendant:

*Pinpoint Instruction No. 3*

"You have received evidence regarding a mental defect or mental disorder of the defendant at the time of the commission of the crime charged in count one. You may consider this evidence, separately or in combination with any evidence of the defendant's intoxication, for the purpose of determining whether or not the defendant actually premeditated and deliberated and harbored malice aforethought which are elements of the crime charged in count one."

*Pinpoint Instruction No. 4*

"The prosecution must prove beyond a reasonable doubt that the defendant committed the charged crime with the required intent and/or mental state. If, after considering all the circumstances, including the arachnoid cyst and the resulting symptoms suffered by defendant, you have a reasonable doubt about whether the defendant formed the required intent to kill, you must find him not guilty of first or second degree murder."

Defendant contends the foregoing instructions failed to alert the jury it could consider evidence of his mental state on the issue *implied* malice.

The People argue defendant invited the error and is therefore prohibited from raising the issue on appeal, and in any event the jury was properly instructed and any error was harmless beyond a reasonable doubt.

As will be explained, while not deciding if the requested pinpoint instructions were correct as a matter of law, we

conclude that defendant invited any error that may have occurred arising from the pinpoint instructions quoted above.

"The doctrine of invited error is designed to prevent an accused from gaining a reversal on appeal because of an error made by the trial court at his behest. If defense counsel intentionally caused the trial court to err, the appellant cannot be heard to complain on appeal." (*People v. Wickersham* (1982) 32 Cal.3d 307, 330, overruled on other grounds in *People v. Barton* (1995) 12 Cal.4th 186, 200.) "For the doctrine of invited error to apply, it must be clear from the record that counsel had a deliberate tactical purpose in suggesting or acceding to an instruction, and did not act simply out of ignorance or mistake. [Citations.] 'The error, in other words, must be "invited.'" [Citation.] This is because important rights of the accused are at stake, and it is the trial court's duty fully to instruct the jury. [Citations.]" (*People v. Maurer* (1995) 32 Cal.App.4th 1121, 1127-1128.)

Defendant challenges the two instructions requested by defense counsel, who discussed with the court the defense theory--that defendant "killed, but [did so] because of his mental defect"--and argued the requested instructions properly included language that, in the absence of malice aforethought, a finding of a general "intent to kill" is still required in order to find defendant guilty of voluntary manslaughter. Defendant concedes his attorney requested the instructions, and does not argue on appeal that counsel did so due to ignorance or mistake. The record is clear that defense counsel had a deliberate

tactical purpose in requesting the disputed instructions. The error, if any, was invited by defendant.

In any event, considering the instructions as a whole, we find the jury was correctly instructed on the law.

Defendant contends he may nonetheless raise the asserted error because the trial court "misinstructed the jury on the relation of the evidence to the mental elements of the offense," thereby affecting his substantial rights. He asserts that the challenged instructions "did not relate evidence of [his] mental disorder to the element of implied malice, but rather implied that mental disorder was irrelevant to that crucial element."

"A defendant challenging an instruction as being subject to erroneous interpretation by the jury must demonstrate a reasonable likelihood that the jury understood the instruction in the way asserted by the defendant. [Citations.]" (*People v. Cross* (2008) 45 Cal.4th 58, 67-68.)

The jury was instructed, via the requested pinpoint instructions, to consider evidence of defendant's arachnoid cyst "for the purpose of determining whether or not the defendant actually . . . harbored *malice aforethought* . . . ," and again "for the purpose of determining whether or not the defendant actually premeditated and deliberated and harbored *malice aforethought* which are elements of the crime charged in count one." (Italics added.)

The jury was also instructed regarding the difference between the two kinds of malice aforethought: express and implied malice (CALCRIM Nos. 520, 521), and the requirement

that, in order to find defendant guilty of the specific intent crime of murder, they had to find that he "not only intentionally commit[ted] the prohibited act, but [he did so] with a specific intent and mental state." (CALCRIM No. 252.) The jury was further instructed with CALCRIM Nos. 521, 522 and 570 regarding the elements required to find defendant guilty of first degree murder, second degree murder, and voluntary manslaughter, as well as a modified version of CALCRIM No. 570 stating that, "Every person who unlawfully kills another human being without malice aforethought but with an intent to kill, is guilty of voluntary manslaughter. [¶] There is no malice aforethought if the person did not harbor malice due to a mental disorder, mental defect or mental disease or due to voluntary intoxication, or both. [¶] In order to prove voluntary manslaughter, each of the following elements must be proved: [¶] 1. A human being was killed; [¶] 2. The killing was unlawful; [¶] 3. The killing was done with the intent to kill." The court also instructed the jury that, "[w]hen a person commits an unlawful killing but does not intend to kill and does not act with conscious disregard for human life, then the crime is involuntary manslaughter. . . ." (CALCRIM No. 580.) These instructions, considered collectively, relate evidence of defendant's arachnoid cyst to the element of malice, both express and implied, and to the evidence necessary to convict defendant of the charged crime.

Defendant contends the jury was instructed to consider evidence of his arachnoid cyst with respect to whether he

"formed the intent to kill" despite the fact that implied malice murder does not require an intent to kill. But this very issue was discussed at trial, at which time defense counsel argued successfully that the requested instruction include language requiring a finding of a general "intent to kill" even for the lesser offense of voluntary manslaughter.

We conclude defense counsel invited the error, if there was any. In any event, the jury was properly instructed.

## II

### *Jury Instruction re Firearm Enhancement*

Defendant contends the firearm enhancement described in section 12022.53(d), should be treated as a specific intent crime and, as such, the trial court improperly instructed the jury that the enhancement was a general intent crime.

At the time defendant committed this murder, former section 12022.53 provided in pertinent part as follows:

"(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), *personally uses a firearm*, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

"(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), *personally and intentionally discharges a*

*firearm*, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

"(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, *personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death*, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life." (Stats. 2003, ch. 468, § 22, p. 3376, italics added.)

Conceding, as he must, that no court has decided the issue, defendant nonetheless contends that beyond the statute's general intent to *use a firearm*, it is implied that a defendant have the specific intent to *discharge the firearm and thereby cause death*. This is true, he urges, because when "the definition [of a crime] refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent." (*People v. Hood* (1969) 1 Cal.3d 444, 457 (*Hood*); see *id.* at pp. 456-457.) The point is not well-taken. *Hood* addressed the issue of general versus specific intent crimes in the context of a charge of assault with a deadly weapon on a peace officer where the jury was given conflicting instructions on the effect of intoxication, one of which directed the jury to consider the defendant's intoxication in determining whether he had the specific intent to commit murder, and the other of which applied to crimes requiring proof

only of general intent and not to the charge of assault with intent to commit murder. (*Hood*, at pp. 450-452.) Having nothing to do with section 12022.53(d) or enhancements of any kind, the *Hood* case is inapposite for the purpose offered by defendant here.

We are similarly unpersuaded by defendant's reliance on *People v. Oates* (2004) 32 Cal.4th 1048. That case addresses the propriety of imposing multiple enhancements based on a single injury under section 12022.53(d), an issue not before us here.

In any event, the language of section 12022.53(d) does not include, as defendant suggests, "an additional intent beyond use of a firearm." Instead, the statute states that imposition of additional punishment is permitted where a defendant "personally and intentionally discharges a firearm and proximately causes great bodily injury . . . or death," not where a defendant personally and intentionally discharges a firearm *with the intent to cause or for the purpose of causing* great bodily injury or death. Thus, by its very wording, the statute requires that the defendant specifically intend to discharge a firearm, not that he specifically intended to cause great bodily injury or death, only that such injury or death was a proximate cause of the intentional act. "[W]hen the Legislature intends to require proof of a specific intent in connection with a sentence enhancement provision, it has done so explicitly by referring to the required intent in the statute. (See, e.g., former § 12022.7, subd. (a), as amended by Stats. 1994, ch. 873, § 3.)" (*In re Tameka C.* (2000) 22 Cal.4th 190, 199.) Because

the Legislature did not make such an explicit reference here, we infer that it did not intend to require proof of a specific intent.

We also find no merit in defendant's assertion that it is reasonably likely the jury would not have returned a true finding had it been instructed that the enhancement allegation should be treated like a specific intent crime. Several months prior to the shooting, defendant told his girlfriend he wanted to stab Keichler. Later, he told Keichler's friend, Joseph, he wanted to "kill that motherfucker" if he saw him. Just prior to the shooting, defendant said Keichler was "nothing but a bitch" and engaged him in a heated conversation, during which he whispered something in Keichler's ear, causing Keichler to respond, "You're going to shoot me, mother----?" and tell someone, "I just got my life threatened over a bunch of bullshit." Moments after leaving the bar, defendant returned, walked quickly up to Keichler, shot him and fled the scene. Defendant buried the gun in a field and told Jennifer he "shot that motherfucker" in the face and was happy that "motherfucker was dead," and he did not think anyone would testify against him. There is significant evidence demonstrating that defendant intentionally discharged the firearm and did so with the specific intent to seriously injure or kill Keichler.

There was no instructional error with regard to the firearm enhancement.

### III

#### *Verdict Form*

The jury returned a verdict form entitled "Finding, Special Allegation Personal Use of a Firearm Count 1," which reads as follows: "We, the jury in the above-entitled matter, having found the defendant . . . guilty of the crime of **2nd Degree Murder** . . . as alleged in Count 1, find the Special Allegation that the defendant personally used a firearm, in violation of Penal Code sections 12022.53(b), 12022.53(c), and 12022.53(d): [X] . . . True."

Defendant asserts that a true finding of firearm "use," which is a "distinct and lesser enhancement allegation," is insufficient to support an allegation of firearm "discharge" as required by Penal Code section 12022.53, subdivision (c) and (d). He claims that the lack of a proper verdict denied him his guaranteed right to jury findings and resulted in reversible error.

First, defendant forfeited appellate review of any defect in the verdict forms by failing to timely object at trial. (*People v. Jones* (1997) 58 Cal.App.4th 693, 715; *People v. Lewis* (1983) 147 Cal.App.3d 1135, 1142.)

Second, the information alleged violations of Penal Code section 12022.53, subdivisions (b) [personal use of a firearm], (c) [personal and intentional discharge of a firearm], and (d) [personal and intentional discharge of a firearm causing great bodily injury and death]. That information was read to the

jury. The court instructed the jury with CALCRIM No. 3149, entitled "Personally Used Firearm: Intentional Discharge Causing Injury or Death (Pen. Code, §§ 667.61(e)(3), 12022.53(d)), " and CALCRIM No. 3146. CALCRIM No. 3149 begins, "If you find the defendant guilty of the crime charged in Count 1, First Degree [M]urder, or the lesser crime of Second Degree Murder, you must then decide whether the People have proved the additional allegation that the defendant *personally and intentionally discharged a firearm* during that crime causing death." (Italics added.) In contrast, CALCRIM No. 3146 begins, "If you find the defendant guilty of a lesser crime charged in Count 1, either Voluntary Manslaughter or Involuntary Manslaughter, you must then decide whether the People have proved the additional allegation that the defendant *personally used a firearm* during the commission of that crime." (Italics added.)

A verdict form is to be read in combination with the charging instrument, the plea entered, and the trial court's instructions. (*People v. Paul* (1998) 18 Cal.4th 698, 706; *People v. Jones, supra*, 58 Cal.App.4th at p. 710.) Unless connected to an information, verdict forms are ordinarily without meaning. (*Paul*, at pp. 706-707.) Furthermore, "the form of the verdict generally is immaterial, so long as the intention of the jury to convict clearly may be seen." (*Id.* p. 707.)

Here, the jury's intent was clear. The jury returned a verdict of guilty on the lesser charge of second degree murder. Consistent with that verdict, and in keeping with the

instruction given in CALCRIM No. 3149, the jury found true the allegation that, in committing the murder, defendant "used a firearm, in violation of Penal Code sections 12022.53(b), 12022.53(c), and 12022.53(d)." In other words, the jury found defendant used a firearm in a manner that violated each of the three subdivisions, including subdivision (d) which requires that the defendant "personally and intentionally discharges a firearm and proximately causes great bodily injury . . . or death."

The recitation of the information, the trial court's instructions, and the verdict form's reference to each of the three relevant Penal Code sections properly placed defendant's guilt on all elements of the enhancement before the jury. Accordingly, the jury's clear intent to find defendant personally used a firearm, personally and intentionally discharged a firearm, and personally and intentionally discharged a firearm causing great bodily injury and death was demonstrated through the verdict. Under these circumstances, the verdict form was proper and there was no error. (*People v. Paul, supra*, 18 Cal.4th at p. 707.)

#### IV

##### *Denial of Request for Jury Instruction on Imperfect Self-Defense*

Defendant contends the trial court's denial of his request to instruct the jury on imperfect self-defense was prejudicial error.

A trial court must instruct, sua sponte, "on all theories of a lesser included offense which find substantial support in the evidence." (*People v. Breverman* (1998) 19 Cal.4th 142, 162.) However, where "'there is no evidence that the offense was less than that charged,'" there is no such duty to instruct. (*People v. Barton, supra*, 12 Cal.4th at p. 196, fn. 5.)

"For killing to be in self-defense, the defendant must actually and reasonably believe in the need to defend. [Citation.] If the belief subjectively exists but is objectively unreasonable, there is 'imperfect self-defense,' i.e., 'the defendant is deemed to have acted without malice and cannot be convicted of murder,' but can be convicted of manslaughter. [Citation.] To constitute 'perfect self-defense,' i.e., to exonerate the person completely, the belief must also be objectively reasonable. [Citations.] . . . [F]or either perfect or imperfect self-defense, the fear must be of imminent harm. 'Fear of future harm--no matter how great the fear and no matter how great the likelihood of the harm--will not suffice. The defendant's fear must be of imminent danger to life or great bodily injury.' [Citation.]" (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082, fn. and italics omitted.) All the surrounding circumstances, including prior assaults and threats, may be considered in determining whether the accused perceived an imminent threat of death or great bodily injury. (*Id.* at p. 1083; see also *People v. Michaels* (2002) 28 Cal.4th 486, 530-531.) "[B]oth self-defense and defense of others, whether

perfect or imperfect, require an actual fear of *imminent* harm. [Citation.]” (*People v. Butler* (2009) 46 Cal.4th 847, 868.)

“This definition of imminence reflects the great value our society places on human life. The criminal law would not sentence to death a person such as the victim in this case for a murder he merely threatened to commit, even if he had committed threatened murders many times in the past and had threatened to murder the defendant; it follows that the criminal law will not even partially excuse a potential victim’s slaying of his attacker unless more than merely threats and a history of past assaults is involved.” (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1189, overruled on another ground in *People v. Humphrey*, *supra*, 13 Cal.4th at p. 1089.)

Here, the evidence was not sufficient to support giving an instruction on imperfect self-defense. Defendant argues Keichler’s “threatening words and attitude” were sufficient to trigger his response of imperfect self-defense. As “ample evidence of a threat of imminent attack from Chad Keichler,” defendant states that “Keichler was drunk, loud and threatening at a party months prior to the homicide”; Keichler had a blood alcohol level of 0.36 percent and had cocaine in his system at the time of his death; Keichler had a prior conviction for “assault as a felony hate crime”; defendant and Keichler exchanged “angry words” in the bar prior to the shooting; the verbal confrontation between defendant and Keichler continued as they both exited the bar; “people in the crowd” pleaded with Keichler to leave; once in the street, Keichler “raised his

voice"; Keichler and Anthony M. "addressed each other in loud, 'macho' or 'tough guy' talk" outside the bar; Keichler said, "I could fight all you guys"; and when the bartender intervened and tried to escort Keichler from the scene, Keichler "continued to yell at the crowd."

Neither the evidence offered, nor the record, demonstrate that defendant shot and killed Keichler in response to a subjective fear of imminent harm. Instead, the evidence shows that Keichler angered defendant at a party months before the shooting, and that defendant repeatedly talked about those events as his anger continued to fester until that fateful day when he and Keichler once again found themselves in the same bar.

Defendant asserts "there was a distinct possibility of a physical attack by Keichler." The record does not bear that out. While Keichler was intoxicated and had cocaine in his system at the time of the shooting, at most he exchanged angry words with defendant inside and outside the bar, yelled at Anthony and the gathering crowd, and boasted that he could "fight all you guys." Heather testified that although Keichler was "getting in [defendant's] face," there was "no shoving" and no physical contact between Keichler and defendant or anyone during the argument that preceded the shooting. Defendant provides no evidence that Keichler verbally or physically threatened him.

While defendant characterizes Keichler's vulgar remarks to Jennifer at the party months prior to the shooting as "loud and

threatening," it was defendant who became angry and said he wanted to stab Keichler at the party, and who later told Joseph he wanted to "kill that motherfucker." On the day of the shooting, it was defendant who was the instigator, telling a friend that Keichler was "nothing but a bitch" and then approaching Keichler and initiating a heated verbal exchange. Once the argument moved outside the bar, it was defendant who quietly said something close to Keichler's ear, causing Keichler to respond, "You're going to shoot me, mother----?" and exclaim, "I just got my life threatened over a bunch of bullshit." It was defendant who, after leaving the bar, returned and shot Keichler in the neck. Defendant notes Keichler's prior conviction for "a felony hate crime," but does not claim to have known about it prior to the shooting, nor does he claim Keichler ever actually threatened to hurt or kill him. After the shooting, defendant told Jennifer he "shot that motherfucker," but gave no indication whatsoever that he did so out of fear of imminent danger.

In the absence of any evidence that defendant actually feared imminent harm, reasonable or otherwise, the trial court had no duty to instruct on the theory of imperfect self-defense. There was no instructional error.

## V

### *Questioning re Compensation Paid to Defense Witness*

During cross-examination, the prosecution asked defense witness Dr. Wu how much he was being paid for his testimony.

Defendant contends that evidence was irrelevant to Dr. Wu's credibility and thus was erroneously admitted. Defendant claims admission of such evidence resulted in prejudice by improperly casting doubt on the credibility of a key defense witness and thereby increasing the likelihood of a murder conviction. We conclude there was no error.

"The compensation and expenses paid or to be paid to an expert witness by the party calling him is a proper subject of inquiry by any adverse party as relevant to the credibility of the witness and the weight of his testimony." (Evid. Code, § 722, subd. (b); see also *Brokopp v. Ford Motor Co.* (1977) 71 Cal.App.3d 841, 849.)

During cross-examination, the prosecution asked Dr. Wu if he was being paid for his time. Dr. Wu responded, "Well, the Regents of the University of California are being paid. I'm a salaried academic." When asked what rate the Regents were being paid, Dr. Wu said he believed it was \$590 for each hour of trial testimony. He estimated that his costs were "between 10 to \$20,000," and that he had expended "maybe 15, 20 hours" on the case.

When the prosecutor inquired about Dr. Wu's salary with UC Irvine, the following colloquy took place between counsel and the court:

"[Defense]: Wait a minute. That's sort of private. May we approach? Because it's got nothing to do with this.

"[The Court]: You can pull it up on the website. It's not private.

"[Defense]: If you can pull it up on the website, fine. But it strikes me that's not relevant here. All right.

"[Prosecutor]: He testified he's receiving a salary and UC Irvine is paying for this.

"[The Court]: That's correct."

Dr. Wu testified his salary was approximately \$170,000, and that the University allows and encourages faculty "to pursue several different line[s] of activity, including expert witness work," the income from which goes to the university. Dr. Wu testified that compensation for his past expert witness testimony was paid to the Regents of the University of California. However, he gives lectures and presentations for which he is given an honorarium by the university.

Pursuant to Evidence Code section 722, subdivision (b), the questions asked of Dr. Wu regarding compensation and expenses already paid or to be paid for testifying were proper.

Defendant asserts the inquiry was improper because compensation for the testimony was not paid directly to Dr. Wu, who is paid a salary by his employer "whether he testifies or not," rendering the evidence irrelevant under Evidence Code section 722, subdivision (b). He further asserts that because similar inquiry would not be permitted of prosecution witnesses, inquiry of defense witnesses only denies him equal protection. Finally, he contends he was prejudiced by the improper casting of doubt on Dr. Wu's credibility. Defendant's claims lack merit.

The fact that compensation for Dr. Wu's testimony is not paid directly to Dr. Wu but is instead paid to the University of California Regents does not render the compensation issue irrelevant. While it may be true that Dr. Wu receives a salary irrespective of whether or not he testifies, his testimony reaps a benefit on the university where he is employed and thus reaps a benefit on him, whether it be monetary or otherwise, rendering compensation paid to his employer relevant to the issue of his credibility.

Defendant's assertion that he was denied equal protection because similar inquiry would not be permitted of prosecution witnesses is a nonstarter, as he does not claim to have been denied the ability to make such inquiry during his examination of any prosecution witness.

Finally, defendant's claim of prejudice finds no support in the record. Dr. Wu explained that he is a salaried academic and that compensation for his testimony was paid to the Regents of the University of California, not to him. He further explained that his employer, UC Irvine, allows faculty to pursue outside activities, including expert witness testimony, and that in addition to testifying previously as an expert witness, he has also given lectures and presentations for which he is not paid directly but for which he is sometimes given an honorarium from the university. Through his testimony, Dr. Wu was able to fully address the issue of his compensation and explain that he is paid a salary whether he testifies or not, thereby giving the

jury sufficient information to make an educated decision regarding his credibility as a defense witness.

We conclude there was no error in permitting inquiry regarding compensation paid to Dr. Wu.

#### DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ NICHOLSON \_\_\_\_\_, J.