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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

VERNON PAUL WILLIAMS,

Defendant and Appellant.

E053825

(Super.Ct.No. FSB1001596)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan Foster,  
Judge. Affirmed with directions.

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, William M. Wood, and Marvin E.  
Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Vernon Paul Williams appeals his conviction for attempted voluntary manslaughter and assault by means of force likely to produce great bodily injury. He contends that the court's incomplete instructions on self-defense and on defenses applicable to attempted voluntary manslaughter deprived him of his due process right to present a defense.

We will affirm the conviction.

### PROCEDURAL HISTORY

Defendant was charged with the attempted willful and premeditated murder of Derrick Simmons (Pen. Code, §§ 664/187, subd. (a);<sup>1</sup> count 1); with assault by means likely to produce great bodily injury (§ 245, subd. (a)(1);<sup>2</sup> count 2); and criminal threats (§ 422; count 3). The information alleged personal infliction of great bodily injury and personal infliction of great bodily injury causing the victim to become comatose due to brain injury or to suffer permanent paralysis (§ 12022.7, subds. (a) & (b)) in connection with counts 1 and 2.

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<sup>1</sup> All statutory citations refer to the Penal Code unless another code is specified.

<sup>2</sup> We note that although the information described the offense charged in count 2 as “assault by means [of force] likely to produce great bodily injury,” it charged defendant with violating section 245, subdivision (a)(1), which is assault with a deadly weapon or instrument other than a firearm. It is section 245, subdivision (a)(4) which penalizes assault by means of force likely to produce great bodily injury. The jury's verdict finds defendant guilty of “assault by means likely to produce great bodily injury,” but the abstract of judgment shows the conviction in count as “assault with dea” (*sic*) in violation of section 245, subdivision (a)(1).

Defendant does not raise any issue pertaining to these discrepancies.

The court dismissed count 3 on motion of the prosecution. The jury acquitted defendant of attempted murder but found defendant guilty of the lesser included offense of attempted voluntary manslaughter. The jury also found him guilty of assault by means likely to produce great bodily injury and found the personal infliction of great bodily injury allegations true.

The court sentenced defendant to a total of eight years in prison. It imposed the middle term of three years on count 1, plus a consecutive five-year term for the great bodily injury enhancement pursuant to section 12022.7, subdivision (b). It imposed and stayed the great bodily injury enhancement pursuant to section 12022.7, subdivision (a). The court imposed sentence on count 2 and stayed it pursuant to section 654.

Defendant filed a timely notice of appeal.

### FACTS

On April 20, 2010, defendant was at the home he shared with his girlfriend, Mychelle Cook, her aunt Nicole Butler and Butler's boyfriend, Kenneth Vessell. Derrick Simmons, the victim, was a long-time friend of Butler. He arrived at the house shortly after 8:00 p.m. that evening. Later that evening, Butler heard Simmons and defendant arguing in the living room and then in the garage. Butler entered the garage and saw Vessell and defendant. Defendant was bleeding profusely from the mouth. He said that Simmons had hit him in the mouth and that Simmons was not going to get away with it. Defendant left the garage through the side door, apparently in pursuit of Simmons.

When Butler reentered the house, she heard a loud “boom,” as if a heavy object had hit something. Vessell called her from outside and said that defendant and Simmons were fighting. Butler went to the door and saw defendant on the ground, with Simmons on top of him, pinning defendant’s arms down and screaming at him to stop or “stay cool.” Simmons said he didn’t want to fight defendant because defendant was too young and too little and Simmons would hurt or kill him if they fought. Simmons asked defendant if he was “going to be cool.” Defendant said he would. Butler returned to her room.

A short time later, Vessell told Butler that Simmons and defendant were fighting again. Vessell went back outside, then came back in and said that Simmons was lying in the middle of the street. Butler went outside and saw Simmons lying motionless on his back in the street with his eyes wide open. She saw defendant run up and kick Simmons hard, a couple of times in the head and a couple of times in the abdomen. Defendant also stomped once on Simmons’s face. Defendant was yelling that Simmons thought “he was big and bad,” and said, “I’m going to kill you . . . .”<sup>3</sup> Vessell attempted to restrain defendant, but defendant broke free and kicked Simmons again. While Vessell moved Simmons’s car, which was in the street with the engine running and the driver’s door open, defendant kicked Simmons several more times.

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<sup>3</sup> We have deleted certain expletives which add nothing to the legal analysis in this case.

Butler went to a neighbor's house and asked the neighbor to call the police. As Butler walked back to her house, she asked defendant to leave Simmons alone. About three or four minutes had elapsed since defendant first started kicking Simmons. Defendant kicked Simmons in the head three or four more times. He then picked up a large rock from a house across the street, held it over his head, and said he was going to kill Simmons by smashing his head. As defendant walked toward Simmons with the rock, Butler pushed him and the rock fell onto the street. Butler picked it up and put it back where it had come from.<sup>4</sup> Throughout the incident, Butler saw defendant kick Simmons in the head more than 10 times.

Vessell testified that the incident began when defendant told Simmons he could not park his car in the garage. Simmons replied that Butler had told him he could park it wherever he wanted. When defendant repeated that Simmons could not park it in the garage, Simmons punched defendant in the mouth, knocking him down. Simmons held defendant down for two minutes and told defendant that he did not want to fight him. Simmons let go of defendant's arms and walked out the side door. Defendant got up and followed him. About a minute later, Vessell heard a loud noise and went through the side door. He saw Simmons pinning defendant to the ground. Simmons punched defendant twice. He also saw Simmons's car with a new dent in the hood. Vessell then went into

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<sup>4</sup> The rock, which was admitted into evidence as Exhibit 31A, weighed about 30 pounds.

the house to get Butler. When he came back outside, he saw Simmons lying in the street, while defendant was walking around, looking angry and frustrated, and cussing.

A number of people from the neighborhood saw defendant hitting or kicking Simmons while Simmons was lying in the street. One heard defendant say, “Who’s the little . . . now?” Another heard him say he was going to “kill that MF.” Another heard him say, “I’m going to kill this . . . ,” and “I’m a little . . . and I still knocked him out.”

Simmons was taken to Loma Linda University Medical Center. He was in critical condition on April 21, 2010. He had numerous skull and face fractures, as well as life-threatening bleeding on the brain. The brain bleeding led to respiratory failure and a coma. A trauma surgeon testified that it would have taken significant force to cause the bleeding.

As of September 10, 2010, Simmons was being cared for in a nursing home. He was comatose and totally dependent on nursing care. By the time of the trial, Simmons was able to feed himself and walk with assistance, but his physician testified that because of the severity of his brain injury, Simmons’s condition might not ever improve significantly.

### *The Defense Evidence*

Defendant testified that he had been drinking with friends before going home on the evening of April 20. He guessed that he had consumed four to five 25-ounce malt liquors and a small bottle of gin. He confronted Simmons in the garage because he

thought Simmons would have his friends come over and smoke methamphetamine. They argued, and Simmons hit him, knocking him out.

When defendant regained consciousness, he stood up and realized that he was bleeding. He was dizzy. He was also angry and scared. He ran outside and yelled at Simmons not to come back. Simmons had backed his car, a Jaguar, out of the driveway. Defendant picked up a rock to defend himself. Simmons drove the car toward him, and defendant threw the rock. The car struck him, and defendant spun off the hood and landed on the ground. Simmons charged him as he was getting up and pinned him with his knees on his chest. The two men fought violently, punching, kicking and tackling one another. Defendant was afraid that Simmons was going to kill him. Simmons was “way bigger” than defendant. He denied intending to kill Simmons, but said he was out of control with both anger and fear. When Simmons was lying on the street, he did not realize that Simmons was unconscious. His eyes were open, and defendant thought he saw him move his arm and leg. He acknowledged that he could have said he was going to kill Simmons, but he did not intend to do so. He acknowledged that he had kicked Simmons in the head five or six times. However, he did not think kicking Simmons in the head would kill him; he had seen other fights where people were stomped and kicked but did not suffer any serious injury. He acknowledged that he should have stopped kicking Simmons when Simmons was unconscious, but defendant was out of control, intoxicated, angry and upset.

The deputy who first arrived at the scene testified that defendant appeared to be intoxicated. The deputy who transported him to the hospital said the same.

Defendant is five feet eight inches tall and weighs 150 pounds. Simmons is about six feet tall and weighed about 250 pounds. Defendant had seen Simmons “beat the shit out of” someone at a liquor store and had been told by others that Simmons had assaulted other people.

### LEGAL ANALYSIS

1.

#### THE COURT WAS NOT REQUIRED TO GIVE AN UNREQUESTED PINPOINT INSTRUCTION ON SELF-DEFENSE

Nicole Butler testified that it was common knowledge “on the street” that Simmons became violent when he was angry and that he was someone “you don’t mess with.” She testified that Simmons had been violent in the past, and that he used to beat his girlfriend and that he had jumped on the boyfriend of an ex-girlfriend and beat him with a bat. Defendant testified that he had seen Simmons beat someone at a liquor store and that he had heard from others that Simmons had been violent. Based on this evidence, defendant contends that the trial court had a duty to include in the instruction on self-defense the following statement: “If you find that the defendant knew that Derrick Simmons had threatened or harmed others in the past, you may consider that information in deciding whether the defendant’s conduct and beliefs were reasonable.” Defendant did not request this instruction, but he contends that the court had a sua sponte duty to

instruct fully and correctly on the principles of self-defense shown to be pertinent by the evidence. The court did include the following in the self-defense instruction: “If you find that Derrick Simmons threatened or harmed defendant in the past, you may consider that information in deciding whether the defendant’s conduct and beliefs were reasonable.”

A self-defense instruction concerning the effect of a defendant’s knowledge of the victim’s prior threats or acts of violence on the reasonableness of the defendant’s conduct is not a statement of the general principles of the law of self-defense; rather, it is a pinpoint instruction relating the particular facts of the case to the elements of self-defense. (*People v. Garvin* (2003) 110 Cal.App.4th 484, 488-489.) The trial court’s responsibility is limited to instructing on the general principles of law relevant to the issues raised by the evidence. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) In the absence of a request by a party, a trial court has no duty to give a pinpoint instruction—one which relates particular facts to the elements of the offense or to a defense—or an instruction which clarifies or amplifies otherwise correct instructions. (*People v. Silva* (2001) 25 Cal.4th 345, 371; *People v. Hudson* (2006) 38 Cal.4th 1002, 1011-1012.) Defendant does not contend that the self-defense instruction was incorrect; he merely contends that it was incomplete because it omitted the paragraph quoted above. Accordingly, the trial court had no sua sponte duty to give the additional instruction.<sup>5</sup>

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<sup>5</sup> *People v. Spencer* (1996) 51 Cal.App.4th 1208, on which defendant relies in support of his argument that the instruction should have been given, is distinguishable because in that case, the defendant requested a pinpoint instruction on an aspect of self-  
[footnote continued on next page]

Defendant also contends that, having given a pinpoint instruction concerning the circumstances known to defendant, the court was obligated to instruct fully and completely. It is arguable that the instruction was misleading because it appears, at least, to allow the jury to consider defendant's personal experience with Simmons but not his knowledge of Simmons's violence against other people. However, the fact that confusion may ensue if the court does not give a pinpoint instruction does not relieve the defense of the burden of requesting it, nor does it place a burden on the court to give the instruction sua sponte: In the absence of a request for a pinpoint instruction, any resulting lack of clarity "is of the defendant's doing, and on appeal he cannot avail himself of his own inaction." (*People v. Rundle* (2008) 43 Cal.4th 76, 145, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) In addition, if the instruction given is otherwise correct, the trial court has no sua sponte duty to clarify. (*People v. Hudson, supra*, 38 Cal.4th at pp. 1011-1012.)<sup>6</sup>

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defense. The appellate court held that although it was error not to give the requested instruction, the error was not prejudicial. (*Id.* at pp. 1219-1221.)

<sup>6</sup> We note that in *People v. Spencer, supra*, 51 Cal.App.4th 1208, the court held that an identical self-defense instruction—i.e., specifying that the jury could consider the victim's prior violence toward the defendant but omitting any instruction concerning the defendant's knowledge of the victim's violence toward others—was not prejudicial because "[t]here [was] nothing in the instruction given that required or suggested that the jury ignore or disregard the admitted evidence of [the victim's] acts or threats against third persons," and because other instructions adequately informed the jury that it must consider all of the circumstances known to the defendant which pertained to the reasonableness of his conduct. Moreover, when the evidence of the defendant's knowledge of the victim's violent conduct toward other people was received, the jury was specifically informed that it was being admitted for the purpose of showing the

[footnote continued on next page]

2.

THE JURY WAS PROPERLY INSTRUCTED THAT SELF-DEFENSE IS A  
COMPLETE DEFENSE TO ATTEMPTED VOLUNTARY MANSLAUGHTER<sup>7</sup>

In giving the standard jury instruction on self-defense, CALCRIM No. 3470,<sup>8</sup> the court stated that self-defense is a defense to attempted murder and assault but did not state that self-defense is a defense to attempted voluntary manslaughter. Defendant contends that this was an error which deprived him of his right to have the jury consider his defense. We disagree.

In instructing the jury on attempted voluntary manslaughter based on imperfect self-defense as a lesser included offense of murder, the court stated, “If you conclude [that] the defendant acted in complete self-defense, his action was lawful and you must find him not guilty of any crime. The difference between complete self-defense and imperfect self-defense depends on whether the defendant’s belief in the need to use

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*[footnote continued from previous page]*

defendant’s state of mind at the time of the shootings. “The only ‘state of mind’ that this evidence tended to establish was defendant Spencer’s fear and apprehension of [the victim]. Thus, the precise point that Spencer sought to have conveyed to the jury through its [*sic*] special instruction was in fact conveyed through the trial court’s repeated admonitions at the time the evidence was admitted.” (*Id.* at pp. 1220-1221.)

<sup>7</sup> This contention and the contention we address in section 3 below appear under the same caption in the appellant’s opening brief. We have separated them for the sake of clarity.

<sup>8</sup> CALCRIM No. 3470 is the standard instruction on self-defense as it applies to crimes other than homicide. CALCRIM No. 505 is the standard instruction on self-defense as it applies to murder, manslaughter, attempted murder and attempted voluntary manslaughter. The wording of the two instructions is substantially similar.

deadly force was reasonable.” Although it would perhaps have been desirable to include attempted voluntary manslaughter in a general instruction on self-defense, or to simply state in that instruction that if defendant acted in self-defense he was not guilty of any crime, including both charged offenses and lesser included offenses, the jury was nevertheless instructed that if defendant acted in actual self-defense, he was not guilty of any crime. The jury was instructed to “[p]ay careful attention to all of these instructions and consider them together.” “Jurors are presumed able to understand and correlate instructions and are further presumed to have followed the court’s instructions. [Citation.]” (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.) If the jury followed the instruction to consider the instructions together, as we must presume that it did (*ibid.*), it is not plausible that it could have found that defendant acted in complete self-defense but nevertheless convicted him of attempted voluntary manslaughter. Accordingly, defendant’s contention fails.

3.

THE TRIAL COURT HAD NO DUTY TO GIVE A PINPOINT INSTRUCTION  
CONCERNING VOLUNTARY INTOXICATION IN CONNECTION WITH  
ATTEMPTED VOLUNTARY MANSLAUGHTER

The trial court instructed the jury, using CALCRIM No. 3426, that it could consider evidence of defendant’s voluntary intoxication only in deciding whether defendant acted with the intent to kill or with the mental state of willfulness, deliberation and premeditation. The instruction went on to state, “In connection with the charge of

Attempted Murder, the People have the burden of proving beyond a reasonable doubt that the defendant acted with the intent to kill or the possession of the mental state of willfulness, deliberation and premeditation. If the People have not met this burden, you must find the defendant not guilty of Attempted Murder. [¶] You may not consider evidence of voluntary intoxication for any other purpose. Voluntary intoxication is not a defense to Assault.” Defendant contends that the instruction should have included the statement that if the jury found that defendant lacked the intent to kill because of his voluntary intoxication, it must also acquit him of voluntary manslaughter.

Voluntary intoxication is admissible solely on the issue of whether “the defendant actually formed a required specific intent, or, when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.” (§ 22, subd. (b); *People v. Saille* (1991) 54 Cal.3d 1103, 1119.) Specific intent to kill is an element of attempted voluntary manslaughter. (*People v. Montes* (2003) 112 Cal.App.4th 1543, 1549.) Here, there was evidence that defendant was intoxicated during the fight with Simmons. However, because voluntary intoxication is not a defense, as such, an instruction on the effect of voluntary intoxication is a pinpoint instruction which is required only upon request. (*People v. Saille, supra*, at p. 1119; *People v. Rundle, supra*, 43 Cal.4th at p. 145.) Accordingly, because defendant did not request the instruction, its omission was not error.

Defendant appears to argue that the jury might have been confused by the instruction relating voluntary intoxication to the intent required for attempted murder but

appearing to exclude it with respect to attempted voluntary manslaughter. However, as we have previously stated, the fact that confusion may ensue if the court does not give a pinpoint instruction does not relieve the defense of the burden of requesting it, nor does it place a burden on the court to give the instruction sua sponte: In the absence of a request for a pinpoint instruction, any resulting lack of clarity “is of the defendant’s doing, and on appeal he cannot avail himself of his own inaction.” (*People v. Rundle, supra*, 43 Cal.4th at p. 145.) In addition, if the instruction given is otherwise correct, the trial court has no sua sponte duty to clarify. (*People v. Hudson, supra*, 38 Cal.4th at pp. 1011-1012.)

4.

DEFENDANT IS ENTITLED TO ONE ADDITIONAL DAY IN PRESENTENCE  
CUSTODY CREDITS

Defendant was given credit for 357 actual days in custody. He contends that because he was arrested on April 20, 2010, and was sentenced on April 12, 2011, he was entitled to credit for 358 days. The Attorney General agrees, and we concur.

DISPOSITION

The judgment is affirmed, with the exception of the award of presentence custody credits. The superior court is directed to issue an amended abstract of judgment and amended sentencing minutes reflecting credit for 358 actual days in custody prior to sentencing. The court shall, within 30 days after the finality of this opinion, forward a

copy of the amended abstract of judgment and amended sentencing minutes to the Department of Corrections and Rehabilitation and to the parties.

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MCKINSTER  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.