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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.

FERNANDO VARGAS,

Defendant and Appellant.

B286839

Los Angeles County
Super. Ct. No. LA084475

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael V. Jesic, Judge. Affirmed.

Emry J. Allen, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle and David E. Madeo,
Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Fernando Vargas of the second degree murder of his mother. He appeals, and we affirm.

BACKGROUND

An information charged Vargas with the October 10, 2016 murder of Carlota Vargas in violation of Penal Code section 187, subdivision (a).¹ Vargas pleaded not guilty.

At trial, the jury heard eyewitness testimony that Vargas pushed his 70-year-old mother Carlota out of a second-story window and then kicked, stomped upon, and beat her as she laid on the concrete driveway below.

1. *Prosecution evidence*

On Monday, October 10, 2016, yelling and screaming in English and Spanish woke up Victor Clay at 2:45 a.m. A man's voice yelled, " 'I have a daughter,' " and a woman's voice answered in Spanish. Clay looked out his window at the second floor of the apartments across the street, and saw "the lady flying completely out of the window backwards," reaching as if to grab something to check her fall. She landed on the driveway below. Vargas stood at the second floor window.

Clay immediately ran outside. The woman was lying in the driveway, moving slowly and saying, " 'Ayuda. Ayuda.' " ("Help. Help."); Vargas was standing next to her. Clay asked, " 'Are you okay? Do you need some help?' " Vargas replied: " 'Mind your fucking business.' " Limping around the woman, Vargas delivered seven or eight kicks to her upper body, head, and chest, grabbing the parking structure rail to get the leverage to kick harder; he stomped on her chest three times.

¹ All subsequent statutory references are to the Penal Code.

Clay's neighbor's son was on his balcony, yelling at Vargas to leave the woman alone. Vargas answered, " 'She's going to die anyway,' " and continued to kick her. He was very angry, but not raving. Later, Clay identified Vargas in a photographic lineup. Clay's 911 call was played for the jury.

Nancy Ochoa also lived across the street, on the second floor. At 2:45 a.m., she heard a man and a woman arguing loudly and angrily in Spanish, with the man saying " '[t]ell me the truth' " once or twice. She went to the window, saw a woman standing with her back to the window on the second floor of a neighboring apartment building, and heard a loud noise. The woman raised her hands as if trying to hold on or grab whatever she could as she was pushed out the window. After the woman hit the ground, a man jumped out of the window and landed in a planter. Grabbing his injured leg, the man limped to where the woman lay, walked around her in a circle, and stomped on her stomach and her face, while she raised her arm to try and block the blows. Someone said, " 'Leave her alone,' " and the man, sounding enraged, answered she was going to die anyway. Later, she was unable to identify the man in a photographic lineup. Ochoa's 911 call was played for the jury.

Vargas's downstairs neighbor of 14 years, Hagop Erdoglyan, had a friendly relationship with Vargas, and Carlota was "a beautiful person" who "was nice to everybody." Erdoglyan woke up between 2:45 and 3:00 a.m., hearing a woman screaming " 'ayuda' " too many times to count. He saw Vargas outside his closed window, and mouthed: " 'What's going on?' " Vargas "looked normal. Honestly, he looked at me like he was amazed," and answered: " 'I am sorry, Jack. Her head is made out of metal. She just won't die.' " The female voice continued to call

for help. Vargas grabbed the gates and repeatedly kicked and stomped upon something or someone. Erdoglyan ran out onto his balcony and saw a woman on the ground. The police showed up a few seconds later.

Claudia Valdes lived on the first floor across the street from Vargas's apartment building. She went to bed around 2:00 a.m., and 20 to 30 minutes later she heard arguing. She then heard a woman screaming for five to 10 minutes, but still could not see anything. Then she heard the woman scream " 'ayuda' " and moan in agony. She looked out the window and saw Vargas pacing back and forth, holding a screen in both hands over his head, and moving it up and down as if hitting someone. Vargas said: " 'This bitch won't die. Her head is made out of steel,' " and mumbled: " 'I'm kicking her in the head.' " Valdes identified Vargas in a photographic lineup.

Responding to a radio call, Los Angeles Police Department Officer Miguel Alcantar and his partner Officer Stephen Buehler found Carlota lying on the driveway, curled in a fetal position against a wrought-iron fence. Vargas, with his back to the officers, stood over Carlota, gripping a window screen and holding it over his head. The officers told him twice to drop the screen. When Officer Alcantar said he would use his taser, Vargas put the screen down and followed commands to face away from the officers and step to the side. Without being ordered, Vargas lay down on the stairs and put his hands out to the side. Officer Buehler handcuffed him, and the officers took him into custody.

Vargas said: " 'My mother is an evil bitch. And she deserves to die. . . . I pushed that bitch. You don't know how evil she is. Is my mom dead? I hope she's dead. She won't die.

Fuck that bitch.’” Vargas continued: “‘I couldn’t take it anymore. My mom lied to me my whole life. My mom just told me she thinks I’m gay.’” At one point the officers had to restrain Vargas when he jerked away and tried to run. Vargas said: “‘The bitch let my daughter go with my wife. I got pissed and we began to argue. She is an evil bitch, and I’m tired of it. . . . I jumped out of the window to stop her.’”

Carlota was gurgling and struggling to breathe. Officer Buehler asked her in Spanish and English what happened, but she could not answer. Her elbow bone protruded, fatty tissue was exposed, and she was bleeding from the eyes and nose. An ambulance took her to the hospital, where she died at 7:45 a.m.

Vargas went to the hospital in a separate ambulance, kicking at the officers as they put him on the gurney. He was sweating and jerking erratically, and Officer Buehler thought he might be on methamphetamine.

Vargas warned the officers that going upstairs would be bad for them, and his dogs were in the apartment. Detective Katherine Gosser inspected Vargas’s apartment. Carlota’s room was in disarray as if after a struggle. The window’s slats were pulled off, and its screen was missing. The fall from the window to the pavement was 19 feet and seven inches.

The coroner testified that the autopsy found Carlota was an otherwise healthy 70-year-old who had suffered multiple abrasions, a lacerated and broken left elbow, lacerations on her aorta, heart, and liver, and fractures of her right and left ribs, pelvis, left wrist, and nose. Hemorrhaging surrounded the brain coverings. Carlota’s injuries were consistent with a fall from a second-story window onto concrete, and having been kicked

and stomped upon with tremendous force. Multiple traumatic injuries caused her death.

2. *Defense evidence*

Vargas testified he had lived in the apartment with Carlota for about 14 years. His wife Jessica moved in three or four years before Carlota died. His relationship with Carlota was good, with ups and downs. He was an only child, and Carlota treated him like a kid. They did not argue often and he never hit her, although when they had worked together they argued about her lack of professionalism.

In 2015, Vargas had been arrested for false imprisonment and convicted of resisting a police officer, with orders to complete domestic violence and drug programs. Jessica had called the police because Vargas was using crystal methamphetamine and alcohol, and would not let Jessica and Carlota leave the apartment. Vargas thought his drug use had made him delusional; he had been afraid of being alone, and feared for his life.

In October 2016, on the Friday before Carlota died, Vargas began to use methamphetamine and alcohol, and Jessica left the apartment. He smoked methamphetamine all weekend, was scared and dehydrated, and slept very little. He began to hallucinate, believing he could talk to a neighbor though a vent in his room.

On Monday, Vargas was in his room making music on his iPad. His daughter had visited a couple of weeks earlier, and he thought he heard her voice, so he went out into the apartment. Carlota was smoking on the balcony. Vargas asked if she had heard his daughter. She said no, and he returned to his room. He came back out to Carlota's room, and asked her if she had

videotaped him and his wife and sent the tapes to Chile. He thought Carlota had answered yes, and he felt violated. Now, however, he “absolutely” believed Carlota never said that she had videotaped him and Jessica.

Vargas was shocked when he believed his mother admitted she had recorded him. “I was on a psychosis. I was delusional. I don’t remember pushing her. I would never push my mom out the window, out of a 2-story window. I love her with all my heart.” He recalled hurting his ankle, “[s]o I must have jumped out of the window.” He vaguely remembered seeing Carlota on the ground, and holding on to the bars of the gate to stomp on her face and kick her in the ribs. He was still angry about the argument so he didn’t help her, and “I was hearing things. I was seeing things. I wasn’t me.”

Vargas loved his mother, and never wanted her to die or be hurt. He knew that pushing his mother out the window and kicking and stomping upon her could injure or kill her, but “[t]hat day I was under the influence of drugs and my—I was out of my head. I was delusional. I was in a psychosis where whatever was happening that day I was completely out of my head.” He did not intend to kill Carlota, although he intended to kick her and stomp on her. Asked if he intentionally pushed her out of the window, he answered: “Yes, it happened.” He did not remember saying that her head was made of metal: “I don’t speak that way. . . . I’m not a violent person. I don’t use language like that. I was angry of the conflict I had with my mom of her [*sic*] what she did that day for lying to me.” Vargas was using alcohol, and he was delusional when he thought Carlota was filming him and when he thought he heard his daughter. He was afraid of the

cops and thought they were part of it, although that was completely absurd.

Vargas remembered the officers arriving and telling him to put down the screen and step away from his mother, but when he answered their questions he was confused and dehydrated. He denied arguing with Carlota or Jessica when he was high.

In 2015, Vargas took his mother's purse so she couldn't leave the apartment, and Jessica had to jump out the window to call 911. The day in 2016 when Carlota died was a blur; he was in a psychosis and he imagined things. Methamphetamine made him nervous, jittery, and anxious, and after continued use he would hear voices.

Vargas felt no animosity toward his mother. Carlota spoiled him, and he told her to cut it out because his wife didn't like it. He remembered being in Carlota's room and pushing her out the window. He did not deny causing Carlota's death, but he never intended to kill her and felt terrible about it. He could not remember what set him off, but "she must have said something that just finally—that something else negative." He had felt enraged, angry, and upset, and jumped out after Carlota because of the things she said. He thought she was a bad person and he was the victim, and he didn't want her to get away.

Vargas's wife Jessica testified she moved in with him and Carlota after she married Vargas in 2013. Vargas started drinking and using methamphetamine on the Friday before the Monday that Carlota died. Vargas was a normal guy, but methamphetamine changed his personality completely. When Vargas was using methamphetamine, "You're talking to someone who is not [there]." He acted crazy ("I mean he was seeing things."). By Sunday, he was very quiet. She didn't want to be

around him while he was using, so Sunday evening she went out. Vargas was in their room watching television, and she did not see him argue with Carlota.

When Jessica called the police in 2015, Vargas was using methamphetamine and “was going out of his mind. He . . . didn’t want to be alone. He was afraid of something. He thought that someone was watching us. Something.” When she got home from work he begged her not to go out, blocked the bedroom door, and would not let her or Carlota leave. He was behaving erratically and aggressively, and Jessica feared for her safety and for Carlota’s. She called the police, and jumped out of the bathroom window to give them the apartment key.

Vargas and Carlota would clash, and then get along. He did not hate his mom, but sometimes he resented her; Carlota’s life revolved around him, and she would do everything for him.

3. *Rebuttal evidence*

Detective Gosser and another detective interviewed Vargas at the police station at 11:00 a.m. on the day of his arrest, after Vargas waived his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. Detective Gosser had no trouble communicating with Vargas, who seemed to understand the questions and was responsive and unafraid. The jury saw and heard a videotape of the interview and a transcript was in evidence.

Vargas told the detectives he argued with Carlota after she told him she had recorded him and Jessica. He had been dehydrated and “super tired,” and he “wanted to push her out the window” after she admitted spying on him. Vargas picked her up, sat her on the windowsill, and flipped her out. He jumped out after her and sprained his ankle. Then he kicked and stomped on her until the police arrived. He took methamphetamine and

drank beer on Saturday. Vargas remembered “when I kicked her in the head, I said her head was hard as steel.” He did not want his mother to die; he wanted everything bad she had done to go away. When the detective told him Carlota had died, he said, “No way. . . . No, you’re lying to me.”

4. *Closing arguments*

In closing, the prosecutor argued that Vargas specifically intended to kill Carlota, and had premeditated and deliberated when he pushed out the window screen, picked Carlota up and put her on the windowsill, flipped her out of the window, and then jumped down to kick and stomp on her. Vargas had plenty of time to think, and his own words showed that he knew exactly what he had done. His methamphetamine use did not prevent him from intentionally and deliberately killing Carlota. Vargas’s testimony that he was in a psychotic state was not credible or reasonable.

Defense counsel argued Vargas was under the influence of methamphetamine, and his voluntary intoxication made him unable to deliberate, premeditate, or form the intent to kill required for first degree murder.

5. *Verdict and sentencing*

The jury found Vargas guilty of second degree murder. The court sentenced Vargas to 15 years to life in state prison, with custody credits and fines and fees.

DISCUSSION

1. *No instructional error occurred*

Vargas argues the trial court’s failure to give instructions on the lesser included offenses of voluntary and involuntary manslaughter denied him his right to a jury trial and his due process rights, requiring reversal. After de novo review (*People v.*

Manriquez (2005) 37 Cal.4th 547, 584), we conclude substantial evidence did not support those instructions.

Vargas requested a voluntary manslaughter instruction. The court denied the request, stating that Vargas had testified that he had hallucinated the purported provocation (Carlota's videotaping of him and Jessica). Even if Vargas had believed his hallucination, the provocation for heat of passion must come from the victim, and there was no evidence that Carlota provoked Vargas.

A trial court must give an instruction on a lesser included offense when substantial evidence would allow a jury of reasonable people to find that the defendant committed the lesser offense, not the greater offense. (*People v. Gutierrez* (2009) 45 Cal.4th 789, 825-826.) Voluntary manslaughter, a lesser included offense of murder, is the unlawful killing of a person without malice, upon a sudden quarrel or heat of passion. (§ 192, subd. (a).) "The provocation which incites the defendant to homicidal conduct in the heat of passion must be caused by the victim [citation], or be conduct reasonably believed by the defendant to have been engaged in by the victim." (*People v. Manriquez, supra*, 37 Cal.4th at pp. 583-584.) Although the defendant must have killed while actually under the influence of a heat of passion, we view the circumstances objectively, and ask whether " "the facts and circumstances were sufficient to arouse the passions of the ordinarily reasonable man." ' ' (*Id.* at p. 584.)

The evidence does not show that Vargas was acting in response to provocation by Carlota sufficient to inflame an ordinarily reasonable person. Vargas testified that he was upset and angry because he believed Carlota told him she had videotaped him and Jessica, but he also testified that his belief

was the product of a hallucination and “absolutely” untrue. A delusional and untrue belief that the victim has done something provocative is not substantial evidence of provocation. Vargas’s own testimony that Carlota did not actually do anything to provoke him (and that he was delusional, not reasonable, in believing otherwise) demonstrates that the trial court properly denied his request for a voluntary manslaughter instruction.²

Vargas also argues the trial court should have sua sponte given an instruction on involuntary manslaughter, which he did not request. A trial court has a duty to instruct on a lesser included offense on its own initiative, if substantial evidence supports it. (*People v. Brothers* (2015) 236 Cal.App.4th 24, 29.) We review de novo the failure to give an instruction sua sponte, considering the evidence in the light most favorable to Vargas. (*Id.* at p. 30.)

Involuntary manslaughter is the unlawful killing of a human being without malice. (§ 192.) Malice is express when the evidence shows a deliberate intention to kill, and is implied when the defendant engages in conduct dangerous to human life, knows that the conduct endangers the victim’s life, and acts with a conscious disregard for life. (*People v. Brothers, supra*, 236 Cal.App.4th at p. 30.)

² Given that there was no substantial evidence that Carlota provoked Vargas, we need not discuss whether Vargas’s hallucination, if true, would arouse the passion of an ordinarily reasonable man. We note that “a voluntary manslaughter instruction is not warranted where the act that allegedly provoked the killing was no more than taunting words.” (*People v. Gutierrez, supra*, 45 Cal.4th at p. 826.)

Vargas acknowledges that he cannot rely on his voluntary methamphetamine intoxication to negate malice and reduce a charge of murder to involuntary manslaughter. (See former § 22, subd. (b), as amended (Stats. 1995, ch. 793, § 1), now § 29.4, subd. (b), as amended (Stats. 2012, ch. 162, § 119).) After section 22, subdivision (b) was amended in 1995, it is no longer proper to instruct a jury that a defendant who kills another without premeditation, deliberation, and intent to kill as the result of voluntary intoxication is guilty of involuntary manslaughter. (*People v. Turk* (2008) 164 Cal.App.4th 1361, 1376.) “[A] defendant who unlawfully kills without express malice due to voluntary intoxication can still act with implied malice, which voluntary intoxication cannot negate. . . . To the extent that a defendant who is voluntarily intoxicated unlawfully kills with implied malice, the defendant would be guilty of second degree murder” (*id.* at pp. 1376-1377), as the jury found in this case.

Instead, Vargas contends substantial evidence supports a conclusion that, at the time of Carlota’s murder, he was “‘delusional’” and “‘out of his mind,’” because he suffered from “drug psychosis syndrome” caused by his methamphetamine use, and therefore acted without malice. “A verdict of involuntary manslaughter is warranted where the defendant demonstrates ‘that because of his mental illness . . . he did not *in fact* form the intent unlawfully to kill (i.e., did not have malice aforethought).’ [Citation.] An instruction on involuntary manslaughter is required whenever there is substantial evidence indicating the defendant did not actually form the intent to kill.” (*People v. Rogers* (2006) 39 Cal.4th 826, 884.)

Vargas defines “drug psychosis syndrome” as “a progressive disease that results from chronic use of and addiction to drugs,

particularly methamphetamine and cocaine.” None of the cases he cites to support this contention uses or defines the term “drug psychosis syndrome,” or otherwise supports his argument. *People v. Pollock* (2004) 32 Cal.4th 1153, 1165 summarizes defense witness expert testimony regarding crack cocaine addiction. *People v. Taylor* (2010) 48 Cal.4th 574, 590 summarizes defense expert testimony regarding the defendant’s mental illnesses and psychotic disorders, and the paranoia and impulsiveness that can result when a chronic abuser of methamphetamine and LSD consumes alcohol. *In re Gay* (1998) 19 Cal.4th 771, 805 describes expert testimony (for purposes of the insanity defense) about the defendant’s impaired brain functioning, seizure disorder, and chemical imbalance given his use of marijuana and perhaps alcohol and heroin. *People v. Weaver* (2001) 26 Cal.4th 876, 937 summarizes experts’ testimony that defendant was schizophrenic, or had a severe personality disorder, or was malingering. None of these cases is relevant to Vargas’s argument that he suffered from “drug psychosis syndrome”³ caused by his methamphetamine use.

Vargas also cites *People v. Smithey* (1999) 20 Cal.4th 936, 955, which describes three defense experts’ testimony that the defendant showed signs of organic brain damage, brain dysfunction, and mild mental retardation. The expert testified that “[c]hronic users of methamphetamine such as defendant may experience impaired judgment, loss of emotional control, and memory impairment. Based upon police reports, a toxicology

³ A Westlaw search for “drug psychosis syndrome” produced no published California cases; in each of the four unpublished cases using the term, the defendant was represented by the same appellate counsel representing Vargas in this appeal.

analysis of defendant's blood, and the testimony at trial, ample evidence indicated defendant was suffering from classic amphetamine psychosis syndrome. . . . His mental disorders caused him to be totally out of control. Absent these disorders he would not have committed this particular crime." (*Id.* at pp. 955-956.) A prosecution expert testified in rebuttal that the experts were no more qualified than laypeople to determine whether the defendant had a particular mental state when he committed the crime, or to decide whether the defendant was psychotic. (*Id.* at pp. 964-965.) The jury found the defendant guilty of first degree murder, robbery, attempted rape, and burglary. (*Id.* at p. 951.) Our Supreme Court rejected the defendant's argument that the prosecutor's questioning of the defense expert rendered the trial unfair. (*Id.* at p. 961.) The court also rejected his challenge to the prosecution's expert testimony that his mental illness or intoxication did not prevent him from forming the required intent. (*Id.* at p. 969.)

In *People v. Reyes* (1997) 52 Cal.App.4th 975, 981, the defendant argued he lacked knowledge the property he received was stolen, because he smoked cocaine and methamphetamine and was "tweaking" (dumpster diving). The trial court did not allow a defense expert to testify Reyes had a variety of mental disorders and " 'polysubstance dependence,' " and did not know the property was stolen. (*Ibid.*) The court of appeal concluded the blanket preclusion of evidence regarding Reyes's mental disorders, and their exacerbation by drug abuse, unfairly denied him the opportunity to prove he lacked knowledge. (*Id.* at p. 986.)

Even if these authorities defined and discussed what Vargas calls "drug psychosis syndrome," the trial court has no

sua sponte duty to give an instruction on mental disease or impairment as a defense to a particular mental state. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119.) Such an instruction is a pinpoint instruction that must be given only if the defendant requests it, and if substantial evidence supports the defense theory. (*People v. Larsen* (2012) 205 Cal.App.4th 810, 824.) “Also, expert medical opinion testimony is *necessary* to establish that a defendant suffered from a mental disease, mental defect, or mental disorder . . . because jurors cannot make such a determination from common experience.” (*Ibid.*, italics added.) Vargas presented no expert testimony. No substantial evidence supported an instruction on involuntary manslaughter on the theory that Vargas lacked the intent to kill Carlota because he suffered from “drug psychosis syndrome.” The trial court did not have a sua sponte duty to instruct on involuntary manslaughter.

We add: “[W]hen the evidence presents a material issue as to whether a killing was committed with malice, the court has a sua sponte duty to instruct on involuntary manslaughter as a lesser included offense, even when the killing occurs during the commission of an aggravated assault. [Citations.] However, when, as here, the defendant indisputably has deliberately engaged in a type of aggravated assault the natural consequences of which are dangerous to human life, thus satisfying the objective component of implied malice as a matter of law, and no material issue is presented as to whether the defendant subjectively appreciated the danger to human life his or her conduct posed, there is no sua sponte duty to instruct on involuntary manslaughter.” (*People v. Brothers, supra*, 236 Cal.App.4th at p. 35.) Vargas pushed his mother out the window and kicked and stomped upon her on the driveway, an assault

whose natural consequences were dangerous to human life. There is no material issue whether he appreciated that this endangered her life, as he repeatedly said she deserved to die and complained she did not die fast enough.

Vargas argues his counsel was ineffective in failing to argue that Vargas suffered from “drug psychosis syndrome,” present expert testimony on the syndrome, and request an involuntary manslaughter instruction. But counsel provides ineffective assistance only if Vargas can establish “his counsel’s representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for counsel’s deficient performance, the result of the trial would have been different,” and “the record demonstrates there could have been no rational tactical purpose for counsel’s challenged act or omission.” (*People v. Mesa* (2006) 144 Cal.App.4th 1000, 1007.) Vargas falls far short.

First, it was objectively reasonable for counsel not to argue that Vargas suffered from a syndrome that even Vargas cannot define on appeal. Second, Vargas’s own words at the time he killed Carlota are evidence of his intent to kill. Witnesses testified that after Carlota fell from the second-story window Vargas jumped after her, and then kicked and stomped on her prostrate body, angrily saying, “ ‘She’s going to die anyway,’ ” and complaining, “ ‘Her head is made out of metal. She just won’t die.’ ” He told the police when they arrived that Carlota was an evil bitch and deserved to die, he couldn’t take it anymore, and he jumped out of the window to stop her. In his interview with the detectives at the station later that morning, he described pushing Carlota out of the window, jumping out after her, and stomping on her and kicking her, although he also said he did not want her

to die. At trial, Vargas testified he was angry, and he intentionally pushed Carlota out of the window and then kicked her and stomped upon her to prevent her from getting away. Third, on this record counsel could reasonably have made a tactical decision not to argue that Vargas suffered from “drug psychosis syndrome,” in favor of arguing that his voluntary intoxication prevented him from premeditating and deliberating as required for a first degree murder conviction. Vargas has not established ineffective assistance.

2. *The trial court did not abuse its discretion when it denied Vargas’s request for juror identifying information*

During deliberations, the jury sent a jury request form to the court, asking: “Can we get more directions/more samples of Penal Code 29.4—Voluntary Intoxication. How does it apply?” The trial court referred the jury back to the instruction on voluntary intoxication.⁴

After the verdict and sentencing, the trial court held a hearing on a defense motion to vacate Vargas’s sentence. The prosecutor explained that the jury had access to her

⁴ As given, CALCRIM No. 625 states: “You may consider evidence, if any, of the defendant’s voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant acted with an intent to kill, or the defendant acted with deliberation and premeditation. [¶] A person is *voluntarily intoxicated* if he or she becomes intoxicated by willingly using any intoxicating drug, drink, or other substance knowing that it could produce an intoxicating effect, or willingly assuming the risk of that effect. [¶] You may not consider evidence of voluntary intoxication for any other purpose.”

computer during deliberations to play video and audio, with an independent ID and password. When she brought the computer back to her office, she had issues connecting, and shut the computer down. A window flashed by so quickly that she could not describe it exactly, but it referenced the words “ ‘voluntary intoxication.’ ” She rebooted the computer and went to the internet history, and “the only thing that came up was Bing.com.” The prosecutor had notified defense counsel and requested a forensic analysis of the computer by the district attorney’s investigative unit. Defense counsel filed a motion to vacate the sentence and a motion for new trial due to juror receipt of extrajudicial evidence, both of which the prosecution opposed.

The court stated, “I have no indication that something wrong was done yet,” and until it knew more it would not release juror information to allow defense counsel to contact the jurors.

The report of the forensic analysis concluded that during deliberations the website for the Bing.com search engine had been visited, but discovered no other internet searches or browsing history.

At the hearing on the new trial motion, trial court stated it did not find “any credible evidence at this time that jurors have done anything inappropriate in this case. I’m convinced after hearing from the people and their analysis of the computer that nothing was done wrong.” Defense counsel argued that it appeared the jury had looked up “voluntary intoxication,” in what was at least an attempt to use the internet, and which “should be enough to warrant a new trial in this case. At the very least the court should allow me access to the jurors[] identifying information so that they can be brought in and questioned independently and individually about that fact.” The trial court

stated it did not believe “there’s any indication that that actually ever happened, that they actually typed something out.” The prosecutor had alerted defense counsel about something she saw that concerned her, and the forensic analysis subsequently found no indication of an internet search. The court denied the new trial motion.

On appeal, Vargas argues the trial court abused its discretion when it refused to provide juror identifying information and in denying the motion for new trial without further investigation.

After the recording of a jury’s verdict in a criminal trial, the trial court is required to seal “personal juror identifying information” such as jurors’ names, addresses, and telephone numbers. (Code Civ. Proc., § 237, subd. (a)(2); *People v. Munoz* (2019) 31 Cal.App.5th 143, 165.) Any person may petition the court for access to the juror information by making a “‘prima facie showing of good cause for [its] release.’” (*Munoz*, at p. 165.) “This showing must ‘ “support a reasonable belief that jury misconduct occurred, that diligent efforts were made to contact the jurors through other means, and that further investigation is necessary to provide the court with adequate information to rule on a motion for new trial.” ’ [Citation.] ‘Good cause does not exist where the allegations of jury misconduct are speculative, conclusory, vague, or unsupported.’ ” (*Ibid.*) Unless there is a satisfactory preliminary showing of possible misconduct, “ “the strong public interests in the integrity of our jury system and a juror’s right to privacy outweigh the countervailing public interest served by disclosure of the juror information.” ’ ” (*Ibid.*)

A new trial may be warranted if juror misconduct has “prevent[ed] impartial consideration of the case.” (*People v. Mora*

(2018) 5 Cal.5th 442, 517.) When allegations of juror misconduct raise a presumption of prejudice, the trial court may (but is not required to) hold an evidentiary hearing. (*Ibid.*) “In contrast, when a court becomes aware of the possibility of misconduct, its only obligation is to ‘ “ ‘make whatever inquiry is reasonably necessary’ ” to resolve the matter.’ [Citation.] This obligation is triggered only when the defense provides evidence strongly suggestive of prejudicial misconduct.” (*Ibid.*) Without such evidence, the trial court does not abuse its discretion by either refusing to release juror information or denying a motion for new trial based on juror misconduct. (*Ibid.*)

The trial court became aware of the possibility of misconduct when the prosecutor stated she noticed the words “voluntary intoxication,” in the process of shutting down the computer to which the jurors had access during deliberations. The prosecutor submitted the computer for forensic analysis. The court held a hearing to review the forensic report, which concluded that only the Bing.com website had been visited but found no other browsing history. The court satisfied its obligation to make the necessary inquiry. Once the inquiry determined that the computer had not been used for an internet search beyond the search engine website, there was nothing to suggest prejudicial juror misconduct. The trial court did not abuse its discretion in denying the motion for new trial and in refusing to release confidential juror information.

DISPOSITION

The judgment is affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.