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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.

EDWARD LLOYD SCARONI,

Defendant and Appellant.

B230340

(Los Angeles County
Super. Ct. No. NA073678)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Richard Romero, Judge. Modified and, as so modified, affirmed.

Randy S. Kravis, 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, Blythe J. Leszkay and David
Zarmi, Deputy Attorneys General, for Plaintiff and Respondent.

Edward Lloyd Scaroni appeals the judgment entered following his conviction by jury of murder in which he personally discharged a firearm causing death, possession of ammunition, three counts of unlawful possession of a firearm and driving a vehicle without the owner's consent. (Pen. Code, §§ 187, subd. (a), 12022.53, subd. (d), 12316, subd. (b)(1), 12021, subd. (a)(1); Veh. Code, § 10851, subd. (a).)

We reject Scaroni's claims of evidentiary and instructional error. However, we order the judgment modified to conform to the oral pronouncement of judgment, to reflect \$240 in criminal conviction assessments (Gov. Code, § 70373), and to impose an additional \$200 in court security fees (Pen. Code, § 1465.8, subd. (a)(1)). As so modified, the judgment is affirmed.

FACTS AND PROCEDURAL BACKGROUND

1. The prosecution's evidence.

a. The crime scene; Scaroni's arrest.

On March 4, 2007, Daniel Urenda left his home in Wilmington, California. Two days later, Urenda's mother filed a missing person report.

On the morning of March 8, 2007, Scaroni's mother went to the Los Angeles Police Department Harbor Division Station and advised Detective Isidro Rodriguez of the possibility of a body in her garage on North Lagoon Avenue in Wilmington. Detective Rodriguez went to the property with Detective Daniel Burzumato and discovered a corpse in the garage under a table. The body, later identified as Urenda's, was wrapped in plastic trash bags sealed with red tape. There was blood on the interior walls of the garage and it appeared Oxi-Clean had been poured on a stain on the floor of the garage. Blankets wet with blood and a bloody sleeping bag wrapped in trash bags were found next to a walkway between the house and the garage. In the garage, a criminalist found latex gloves, a roll of plastic bags, a roll of red tape and a beer can with a red stain on it.

Detective Eric Rogers went to Scaroni's apartment building in Long Beach and engaged Scaroni in conversation through a second story window for approximately three hours in an attempt to coax Scaroni from the building. Rogers described Scaroni as "erratic," "agitated" and "nervous" with "mood swings." At one point, Scaroni

disappeared from the window. When he returned, Scaroni said he had been researching ways to cover up evidence. Although Scaroni would randomly change topics, he was responsive to Rogers' questions. When Scaroni eventually exited the apartment, he was very distraught.

In Urenda's apartment, detectives found an AR-15 semiautomatic assault rifle, a shotgun and various types of ammunition. On a table next to the bed was a parking ticket issued to Urenda's car, 25 grams of methamphetamine and a receipt for a box of cleaning gloves.

A coroner's investigator determined Urenda had been shot on the left side of the head. An autopsy revealed the fatal bullet remained lodged in Urenda's right maxillary sinus. A deputy medical examiner testified the bullet traveled left to right, back to front and downward from above the left ear to the sinus cavity below the right eye. Urenda's bile contained alcohol; his liver contained traces of marijuana and methamphetamine.

b. *Scaroni is interviewed by Detective Burzumato and then Detective Rodriguez.*

Scaroni was transported to the Harbor Division station. For approximately one hour, Detective Burzumato asked Scaroni basic questions. Burzumato testified that, during this time, Scaroni was very nervous but cooperative. Scaroni spoke conversationally and volunteered information about his background. Also, Scaroni behaved like a tweaker, i.e., a methamphetamine user, in that he often scratched or touched himself. However, Scaroni was not under the influence at the time of the interview.

Burzumato testified Scaroni spoke of hearing voices during the interview five or six times, usually during lulls in the conversation. At one point in the interview, Scaroni stated there was a person behind Burzumato who was going to stab Burzumato in the neck with a pen. Burzumato moved his hand to demonstrate no one was there. Scaroni said he could not understand why Burzumato could not see or hear the person. Although Scaroni was angry and cursed at times, he generally was calm. Burzumato did not feel he was in danger or that Scaroni might do something violent.

When Detective Rodriguez entered the interview room, Scaroni waived his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] and told the detectives he shot his friend Urenda in the side of the head with a .40-caliber Glock semiautomatic pistol. On the day of the shooting, Urenda drove Scaroni to a store where they purchased beer. They then went to a garage owned by Scaroni's mother where they often drank and used narcotics. As they walked to the garage, Scaroni transferred a gun he was carrying from his waistband to his pocket. In the garage, Scaroni sat in a chair and Urenda sat on a mattress on the floor with his shoulder against the wall. Scaroni and Urenda argued over a drug dealer Urenda had promised not to contact on his own. During the argument, Urenda became angry and agitated. Scaroni shot Urenda because he thought Urenda was about to get up from the mattress and stab him with a knife.

After the shooting, Scaroni drove Urenda's car to Shoreline Village in Long Beach and discarded the gun in the water. He then drove the car to Compton and left it. The next day, he returned to the garage with cleaning and packaging supplies. He wrapped Urenda's body in trash bags secured with red tape and cleaned the area with Oxi-Clean and water.

Scaroni questioned the detectives several times during the interview to see if they had been to the crime scene. A few times during the interview, including after Scaroni confirmed the detectives had visited the crime scene, Scaroni said, "I'm fucked."

After a 20-minute break, Rodriguez asked Scaroni additional questions. Scaroni then telephoned his mother and repeatedly told her, "I'm fucked. I'm gonna get life." Scaroni did not tell his mother he had been trying to defend himself or that he had heard voices.

Rodriguez asked Scaroni additional questions in an interview that was audio tape recorded, the previous interview having been video tape recorded.

The video and audio tape recordings were played for the jury.

After the interviews, Scaroni led the detectives to Urenda's car and to the location in Shoreline Village where he had discarded the gun.

When asked if Scaroni referred to hearing voices, Rodriguez testified Scaroni did not mention voices during Rodriguez's interview as he had during Burzumato's. Rodriguez testified the subject of voices "didn't come up unless we brought it up." Rodriguez indicated he did not remember Scaroni mentioning voices when they were looking for the car or the gun, which was never found.

On cross-examination with respect to the transcript of the audio recording, Rodriguez admitted that, in response to a question, Scaroni stated, "No, it's just that they're bothering me." At the time, Rodriguez thought Scaroni was referring to the other detectives present. However, in retrospect, Rodriguez agreed it appears Scaroni is referring to voices.

2. Defense case.

a. Arthur Kowell, M.D.

Arthur Kowell, M.D., a neurologist, reviewed Scaroni's medical records including a 1998 mental health assessment which indicated Scaroni had been diagnosed with depressive disorder, anxiety disorder and oppositional defiant disorder. Other records indicated Scaroni was hospitalized for depression after suicide attempts when he was 14, 16 and 18 years old. Kowell also examined Scaroni on December 2, 2008, and diagnosed Scaroni primarily with schizoaffective disorder, depressive type. Scaroni also had "neurological dysfunction probably secondary to polysubstance abuse with possible contributory effects of head trauma." Scaroni also might have a neurological injury related to prenatal complications due to his mother's diabetes. A person with developmental abnormalities of the brain can experience problems with impulse control, judgment, executive function and mood. Kowell concluded Scaroni's neurological dysfunction could have affected his ability to understand his actions.

Scaroni told Kowell that, while he was with Urenda in the garage, he became paranoid and heard voices that told him Urenda was trying to "set [him] up." Scaroni felt Urenda's pockets and knew he had a knife. Scaroni panicked and shot Urenda because Urenda threatened him with the knife.

b. *Fred Bookstein, Ph.D.*

Fred Bookstein, Ph.D., testified an MRI of Scaroni's brain revealed damage to his corpus callosum that is consistent with fetal alcohol syndrome. Individuals with this "spectrum disorder typically have social intelligence lower than their measured I.Q.," they are likely to have trouble with alcohol and narcotics, more than half have trouble with the law and approximately 40 percent have a history of incarceration.

c. *Debra Webb, Ph.D.*

Debra Webb, Ph.D., a psychologist for the Department of Corrections, treated Scaroni at the Los Angeles County parole outpatient clinic between April of 2004 and April of 2006 while Scaroni was on parole for carrying a loaded firearm. Over that two-year period, Webb saw Scaroni 24 times. Scaroni told Webb he had been treated for depression but denied suicide attempts or psychiatric hospitalization and blamed whatever symptoms he had exhibited in the past on substance abuse. However, in November of 2004, Webb diagnosed Scaroni as having a schizoaffective disorder, depressive type. In Webb's opinion, Scaroni suffered auditory and visual hallucinations, an inability to carry out plans and he had paranoid and grandiose delusions.

In the lobby of the parole clinic, Scaroni would either get so anxious that he would leave or become extremely tense and talk loudly about someone or gang members hurting him to the point that other parolees in the lobby would become fearful of Scaroni. Webb recalled Scaroni sometimes was afraid of gang members and at other times claimed to be affiliated with them. On two occasions, Webb became concerned for her own safety due to Scaroni's agitation. To avoid these situations, Scaroni entered the clinic by a special door. Although there is no cure for schizoaffective disorder, the symptoms can be managed to varying degrees with medication. Parole provided Scaroni structure and he responded to medication but still would hear voices and become paranoid when stressed. Webb knew Scaroni was not using drugs while on parole as he was subject to random drug testing and never tested positive.

Webb testified she had a great deal of experience with malingering. She did not believe Scaroni was malingering while he was on parole as he had nothing to gain. Rather, he tried to minimize his symptoms.

In Webb's opinion, Scaroni's mental illness and neurological damage would interfere with his ability to plan. Although he would be able to think about things he wished to do, he would have trouble doing them in a logical, cohesive fashion. Webb would be concerned if Scaroni stopped taking his medication even for only a few days and it would be problematic within a week. Webb's primary concern was that Scaroni would stop taking his medication, become paranoid, misperceive a situation and hurt someone. Despite Webb's concerns, she was not aware of any incident where Scaroni actually became violent.

Scaroni was discharged from parole on February 21, 2007. Eleven days later, the shooting incident occurred.

On cross-examination, Webb admitted her notes indicate Scaroni told her in the initial interview that he abused methamphetamine on an almost daily basis. At their third meeting on May 25, 2004, Scaroni told Webb he drank two 40-ounce bottles of beer a day, sometimes drinking before he appeared at the parole office. Scaroni showed improvement in August of 2004, after he stopped drinking. In February 2006, Scaroni told Webb that he still heard voices, but it was "okay."

d. *Other evidence.*

On April 5, 2007, Arthur Corona, an attorney representing Scaroni's mother, gave Detective Rodriguez a knife and a wallet containing Urenda's driver's license. Corona testified he received both items from Scaroni's mother.

3. *Sanity phase.*

a. *Defense case.*

Edward Fischer, Ph.D., evaluated Scaroni's competence to stand trial in a report dated June 4, 2007, and wrote a report addressing Scaroni's sanity dated June 8, 2009. Fischer conducted numerous interviews and testing sessions with Scaroni in 2007 and 2008, and reviewed Scaroni's medical and psychiatric records from 1995 through 2008.

Fischer concluded Scaroni had organic brain damage. Fischer initially diagnosed Scaroni as having schizoaffective disorder. Additional information available at the time of Fischer's second report caused Fischer to change his diagnosis to schizophrenic disorder, paranoid type, the symptoms of which are delusions and paranoia. Fischer did not see malingering as a significant factor with Scaroni as he consistently has been mentally ill from a young age.

Presented with a hypothetical based on the facts of this case, Fischer opined the person in the hypothetical suffered from a mental disease but meant to pull the trigger and knew he was shooting someone, but believed he needed to act out of self-defense. Consequently, he did not understand the nature and quality of his action and did not understand it was morally or legally wrong. Fischer testified the post-shooting conduct could be explained by a belated realization of the wrongfulness of the conduct. If Scaroni stopped taking his prescribed medications, his psychosis would return more intensely for two or three days and then would abate to its original level.

On cross-examination, Fischer admitted Scaroni understood the difference between right and wrong, but believed he was right.

b. *People's case.*

Sanjay Sahgal, M.D., a forensic psychiatrist, reviewed Scaroni's records and concluded Scaroni probably had an authentic mental illness of some sort but also had a tendency to exaggerate or feign symptoms. During an interview with Scaroni, Sahgal noticed "pretty clear evidence of some degree of exaggeration or even faking of symptoms." Sahgal diagnosed Scaroni with mental health problems, methamphetamine dependence and depressive and psychotic symptoms associated with substance abuse or possibly a provisional schizoaffective disorder. Sahgal could not make a firm diagnosis because he could not determine the extent to which Scaroni's symptoms were attributable to drug abuse.

Given a hypothetical based on the facts of this case, Sahgal opined the shooter understood he was shooting a gun and that it would cause injury. Also, because the shooter behaved in a goal-directed and organized manner, Sahgal believed the shooter understood the nature and quality of his behavior. Sahgal testified the attempts to conceal evidence required an understanding of the wrongfulness of the conduct. A history of mental illness would not change Sahgal's opinion as mental illness does not preclude the ability to appreciate the wrongfulness of one's actions.

Sahgal noted a county jail psychiatrist who examined Scaroni after the shooting found Scaroni's thinking was goal-oriented and he had no delusions, hallucinations or spontaneous unusual behavior that suggested perceptual disturbances. Sahgal characterized this report as "high quality data" due to its temporal proximity to the shooting. Also, 10 days after the shooting, a substance abuse counselor at the county jail reported Scaroni participated in a hygiene group, watched a movie and engaged in group activity without any sign of psychotic impairment. Sahgal opined this rendered it unlikely Scaroni had been acutely psychotic at the time of the shooting five or ten days earlier as psychotic disorders generally last for weeks and typically are not "conveniently circumscribed to a very high-powered event."

CONTENTIONS

Scaroni contends the trial court erroneously precluded Webb from testifying about Scaroni's mental status during the police interview and about Scaroni's ability to perform the tasks he allegedly undertook after the shooting. Scaroni further claims the trial court erroneously instructed the jury not to consider Scaroni's absence from the courtroom during the playing of the video tape recorded interview. Scaroni also requests correction of the abstract of judgment to reflect the oral pronouncement of judgment.

The People request correction of the abstract of judgment to reflect \$240 in criminal conviction assessments (Gov. Code, § 70373), and to impose an additional \$200 in court security fees (Pen. Code, § 1465.8, subd. (a)(1)).

DISCUSSION

1. *The trial court committed no reversible error in excluding Webb's testimony regarding Scaroni's demeanor during the video tape recorded interview.*

- a. *Background*

Webb, the psychologist who treated Scaroni between April of 2004 and April of 2006 while he was on parole, testified she had experience in determining when patients are malingering to obtain "secondary gain," such as preferred housing in prison, based on whether the individual's demeanor matched what they reported. Thereafter, defense counsel asked if Webb had seen the videotape of Detective Rodriguez's interview of Scaroni. The prosecutor objected. Outside the presence of the jury, defense counsel indicated he intended to ask Webb "what her perceptions are of what the defendant is doing." Defense counsel claimed the detectives testified Scaroni only heard voices he was asked about the crime and "basically, they were saying that they don't believe his symptoms. The doctor will tell us her opinion of what happened during the videotape and why he would do what he did, with his mental illness."

The prosecutor argued defense counsel's request that Webb "act, in essence, as a lie detector" invaded the province of the jury and was significantly different from testimony related to Webb's treatment of Scaroni.

The trial court sustained the prosecutor's objection and indicated it did not recall the detectives had made any sort of "a lay person's diagnosis" of Scaroni or had "commented on his behavior." Further, it would invade the province of the jury to allow Webb "to interpret in a psychological or psychiatric fashion or diagnos[e] the defendant at the time of the giving of the statement."

- b. *Scaroni's contention.*

Scaroni contends the trial court abused its discretion and infringed his right to present a defense when it precluded Webb from expressing an opinion on whether Scaroni's behavior during the police interview was indicative of someone who legitimately was experiencing hallucinations. He claims Webb's opinion was sufficiently beyond common experience and Webb had unique insight into Scaroni's behavior that

could have assisted the jurors. He relies on the rule that experts have “considerable latitude to express an opinion on the defendant’s mental condition at the time of offense” as long as they do not testify about “the defendant’s capacity to have, or actually having, the intent required to commit the charged crime.” (*People v. Cortes* (2011) 192 Cal.App.4th 873, 910; *People v. Nunn* (1996) 50 Cal.App.4th 1357, 1365; *People v. Young* (1987) 189 Cal.App.3d 891, 906.)

Scaroni further asserts Webb’s testimony was admissible to rebut the testimony of Detectives Burzumato and Rodriguez that implied Scaroni’s hallucinations were not genuine. (See *Andrews v. City and County of San Francisco* (1988) 205 Cal.App.3d 938, 946.) He claims that, had Webb’s testimony been permitted, it is reasonably probable the jurors would have reached a more favorable result in both the guilt and sanity phase of the trial.

c. Resolution.

A trial court’s ruling on the admissibility of evidence is reviewed for an abuse of discretion. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1113.) Under this standard, a trial court’s ruling will not be disturbed unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*Ibid.*)

Here, Scaroni concedes it was unknown what Webb would have said had defense counsel been allowed to inquire about her impression of Scaroni’s mental state during the police interview. Thus, Scaroni is unable to show prejudice from the exclusion of this testimony.

In any event, even had Webb testified Scaroni was experiencing auditory hallucinations during the interview, this testimony would not have addressed Scaroni’s mental state at the time of the shooting. Also, the jury saw and heard the video and audio recordings of Scaroni’s interviews in which he claimed he heard voices. No abuse of discretion appears in the trial court’s conclusion Webb’s proffered testimony would invade the province of the jury. (See *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 82; *People v. Smith* (2003) 30 Cal.4th 581, 628.)

Further, the trial court's ruling did not impede Scaroni's right to present a defense. Webb testified extensively as to her diagnosis of Scaroni and indicated Scaroni experienced hallucinations during the two-year period she treated him even when he was medicated. Thus, this case is markedly different from the situation in *Cortes*, cited by Scaroni, in which a mental health expert was not permitted to testify about the defendant's diagnosis or mental condition at the time of the offense. (*People v. Cortes*, *supra*, 192 Cal.App.4th at pp. 908-909.) Rather, the trial court excluded evidence on a minor or subsidiary point, which did not interfere with Scaroni's constitutional right to present a defense. (*People v. Cunningham* (2001) 25 Cal.4th 926, 999.)

Scaroni claims Webb's testimony would have countered the detectives' testimony which implied they did not believe Scaroni's claim he heard voices during the interview. However, Burzumato testified only that Scaroni mentioned the voices several times during the portion of the interview he conducted. Rodriguez testified Scaroni did not mention voices during Rodriguez's interview as he had during Burzumato's. Rodriguez also indicated the subject of voices "didn't come up unless we brought it up," and Rodriguez did not remember Scaroni mentioning voices when they were looking for the car or the gun. Neither detective expressed an opinion as to the veracity of Scaroni's claim of auditory hallucinations. Thus, there was no opinion for Webb to counter.

Finally, the jury heard substantial evidence that showed Scaroni, in fact, had mental illness marked by auditory hallucinations. In closing argument, the prosecutor admitted Scaroni heard voices but argued Scaroni was jealous of Urenda and the voices told Scaroni that Urenda had lied, not that Urenda was going to hurt him. Thus, even assuming error in the exclusion of this evidence, under any standard of review, no different result would have obtained. (*Chapman v. California* (1967) 386 U.S. 18, 24 [17 L.Ed.2d 705]; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

2. *The trial court committed no reversible error in excluding Webb's testimony related to Scaroni's ability to perform the post-shooting tasks ascribed to him.*

Defense counsel asked Webb's opinion as to whether a seriously mentally ill person could accomplish the specific acts Scaroni was alleged to have performed after the shooting, including wrapping the body in plastic bags and red duct tape, driving the victim's car and leaving it on the street, disposing of a gun and buying cleaning supplies. At the sidebar, the prosecutor objected on the ground defense counsel was asking Webb to render an opinion on Scaroni's ability to form the intent required for murder.

Defense counsel denied that objection and indicated Webb would be asked only whether Scaroni was capable of planning "ahead to wrap up a body, go to the store and things of that nature." Defense counsel asserted Webb would not be asked about Scaroni's ability to commit crimes but whether he "is able to do everyday things."

The trial court ruled defense counsel could inquire about Scaroni's general ability to plan or "have a strategy," but precluded counsel from asking about Scaroni's ability to accomplish specific tasks he allegedly performed after the shooting because that would invade the province of the jury.

Webb thereafter testified Scaroni's mental illness and his neurological damage would interfere with his ability to plan. Scaroni would be able to think about things he wished to do but he would have trouble "organizing them, putting [them] together, doing them in kind of a logical cohesive fashion." "He can do bits and pieces, but it's kind of scattered and messed up."

Scaroni contends that, had Webb testified Scaroni's mental illness impaired his ability to perform these tasks, the prosecution's consciousness of guilt theory would have been undermined.

We find no abuse of the trial court's discretion in this ruling. (*People v. Guerra*, *supra*, 37 Cal.4th at p. 1113.) The trial court permitted Webb to testify generally that Scaroni's ability to plan and carry out a plan would be impaired by his mental illness. Thus, as with Scaroni's previous claim, the trial court's ruling resulted in exclusion of evidence on a minor or subsidiary point and did not interfere with Scaroni's right to

present a defense. (*People v. Cunningham, supra*, 25 Cal.4th at p. 999.)

Further, even if Webb had testified Scaroni's attempt to hide Urenda's body and clean the crime scene were consistent with his mental illness, it is not reasonably probable the jury would have reached a different verdict. Thus, even assuming error, Scaroni cannot show prejudice.

3. *No reversible error in the trial court's instruction not to consider why it had excused Scaroni from the courtroom.*

Immediately before the video tape recording of Scaroni's police interview was played for the jury, defense counsel advised the trial court Scaroni did not wish to be present in the courtroom while the DVD was played. Defense counsel indicated Scaroni was becoming visibly agitated and counsel wished to avoid an outburst. The trial court denied the request, indicating it lacked authority to excuse Scaroni from the proceedings.

At the first break in the proceedings after the playing of the DVD commenced, the trial court noted Scaroni was shaking, his eyes were closed and his face had turned red. Defense counsel added Scaroni was hyperventilating, his fists were tightly clenched, he was shaking and his head was down.

The trial court ruled Scaroni's conduct amounted to an outburst in the presence of the jury, the conduct was likely to continue and it would prejudice Scaroni in the eyes of the jury. Over the People's objection, the trial court ordered Scaroni removed from the courtroom until the conclusion of the playing of the DVD.

The prosecutor then asked whether the trial court intended to admonish the jury regarding Scaroni's absence. Defense counsel suggested the jury might think the defendant normally is excluded during the playing of videotaped interviews and asked the trial court make no mention of it. Defense counsel indicated jurors had been looking at Scaroni while he was shaking and defense counsel "would rather not point it out and make it any more obvious."

The trial court ruled Scaroni's sudden absence might preoccupy the jury and prevent it from focusing on the videotape. Thus, the jury should be instructed on Scaroni's absence "so there is no speculation and no undue prejudice to the defendant."

The trial court thereafter advised the jury, “I have decided that it’s best to proceed without Mr. Scaroni during the playing of the DVD. He will return once the DVD is played. You’re not to speculate why I’m doing this. It’s a non-fact. Just watch and listen to the DVD.”

Scaroni contends that, because a trial court has no sua sponte duty to instruct the jury not to consider a defendant’s absence from trial (*People v. Sully* (1991) 53 Cal.3d 1195, 1241), the trial court should have accommodated defense counsel’s request and refrained from admonishing the jury concerning Scaroni’s absence. Scaroni notes the admonishment is for the defendant’s benefit and it is defense counsel’s obligation to weigh the “questionable benefit” of such an instruction against the risk it will prejudicially highlight the evidence. (See *People v. Griggs* (2003) 110 Cal.App.4th 1137, 1141; *People v. Freeman* (1994) 8 Cal.4th 450, 495.)

Scaroni concludes it is at least reasonably probable the instruction, which highlighted Scaroni’s outburst and absence, affected the jury’s decision on both guilt and sanity.

Contrary to Scaroni’s assertion, a trial court is obligated to instruct the jury not to speculate about the removal of a defendant from the courtroom after an outburst. (*People v. Lewis* (1983) 144 Cal.App.3d 267, 280-281.) In *Sully*, the case cited by Scaroni, the defendant voluntarily absented himself from the courtroom during the penalty phase of trial. (*People v. Sully, supra*, 53 Cal.3d at p. 1241.) Here, Scaroni was removed from the courtroom as the result of an outburst. Consequently, the trial court had a duty to instruct the jury.

Moreover, assuming the trial court did not have a sua sponte obligation to instruct the jury not to speculate on the reason for Scaroni’s absence from the courtroom, the instruction was consistent with the trial court’s obligation to control the proceedings, was intended to benefit Scaroni and was not an abuse of discretion. (*People v. Cline* (1998) 60 Cal.App.4th 1327, 1334; Pen. Code, § 1044.)

Scaroni claims the prosecutor made improper use of the admonition by eliciting Webb's testimony that someone with Scaroni's mental illness who was properly medicated probably would be able to watch himself on a screen without convulsing. However, given Scaroni's conduct before he was removed from the courtroom, the prosecutor would have been able to elicit this testimony regardless of whether the trial court admonished the jury.

In sum, under any standard of review, any error was harmless.

4. *The abstract of judgment must be modified and corrected.*

The trial court sentenced Scaroni to an indeterminate term of 25 years to life for first degree murder and a consecutive indeterminate term of 25 years to life for the personal discharge of a firearm causing death. The trial court also imposed a consecutive determinate term of two years on count 2, a similar concurrent term on counts 3, 4, 5 and 6, and imposed a one-year prior prison term enhancement for a total determinate term of three years.

The trial court ordered Scaroni to pay, inter alia, a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)) for each conviction but neglected to impose a criminal conviction assessment for each count (Gov. Code, § 70373).

The abstract of judgment reflects a term of two years in prison for counts 2 through 6 for a total determinate term of 10 years in prison. Additionally, the abstract of judgment reflects a \$40 court security fee only with respect to count 1.

Scaroni requests correction of the abstract to reflect the term imposed. The People request correction of the abstract to impose a \$40 criminal conviction assessment (Gov. Code, § 70373) for each count, or \$240, and a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)) for counts 2 through 6, or \$200.

We shall order the abstract of judgment modified as requested. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Castillo* (2010) 182 Cal.App.4th 1410, 1415, fn. 3; *People v. Brooks* (2009) 175 Cal.App.4th Supp. 1, 5; *People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

DISPOSITION

The judgment is modified to reflect concurrent terms on counts 3, 4, 5 and 6, a \$40 criminal conviction assessment on each of the six counts (Gov. Code, § 70373), and a \$40 court security fee on counts 2 through 6 (Pen. Code, § 1465.8, subd. (a)(1)). As so modified, the judgment is affirmed. The clerk of the superior court shall prepare and forward an amended abstract of judgment reflecting these modifications to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.