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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS SANTILLAN VALDES,

Defendant and Appellant.

B289312

(Los Angeles County
Super. Ct. No. GA099511)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jared D. Moses, Judge. Affirmed.

Theresa Osterman Stevenson, 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, Senior Assistant Attorney General, and Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

Luis Santillan Valdes appeals from his judgment of conviction of first degree murder, attempted murder, assault with a firearm, and fleeing a pursuing police officer, with true findings on firearm enhancement allegations. On appeal, Valdes argues the trial court committed prejudicial error by failing to give a voluntary intoxication instruction to the jury. He also asserts the trial court erred by imposing certain fines and fees without considering his ability to pay. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

In an amended information, the Los Angeles County District Attorney charged Valdes with one count of murder (Pen. Code,¹ § 187, subd. (a)), one count of attempted willful, deliberate, and premeditated murder (§§ 664, 187, subd. (a)), four counts of assault with a firearm (§ 245, subd. (a)(2)), and one count of fleeing a pursuing police officer while driving recklessly (Veh. Code, § 2800.2). It also was alleged that Valdes personally and intentionally discharged a firearm in the commission of the murder and attempted murder (§ 12022.53, subds. (b)-(d)), and personally used a firearm in the commission of the other offenses (§ 12022.5, subd. (a)).

¹ Unless otherwise stated, all further statutory references are to the Penal Code.

II. The Prosecution's Case-In-Chief

A. August 19, 2016 Social Gathering

On the evening of August 19, 2016, Gabriel De La Torre² held a social gathering for a group of friends in the backyard of his home. The group included Frank Acosta, Adolfo Cortez, and several other men. At some point, Valdes joined the gathering. Most of the men in the group were acquainted with Valdes because he resided with his wife and son in a rear house on Gabriel's property, and had attended other social gatherings. Valdes was on amicable terms with the men; they had not seen him angry or violent in the past.

When Valdes arrived at the gathering, he said hello, grabbed a beer, and sat down. Valdes spoke to the group in a normal voice and seemed calm. The men socialized, drank beer, and smoked tobacco. Gabriel talked about replacing a fence between his property and the house next door; Valdes agreed to help if he was paid, and named a price to perform the work. Gabriel indicated that he would speak to the neighbor about splitting the cost of the project. Valdes did not appear to be upset by anything that Gabriel said.

About 30 minutes later, however, Valdes's demeanor changed, and he began speaking in a loud, angry voice. He grabbed a spider that was crawling nearby, squashed it, and threw it in the direction of Cortez. He announced that he was not afraid of anything. Valdes also told Cortez that he would pay him money to have contact with poisonous scorpions, which

² For clarity and convenience, and not out of disrespect, we shall refer to members of the De La Torre family by their first names.

Valdes claimed would harm Cortez but not him. At one point, Valdes stood up and told the group that he was a “real man” and did what he said, “not like other people who just . . . talk and they don’t follow-up.” In response, the other men laughed a bit, which appeared to make Valdes angrier. Valdes yelled at the group not to laugh at him. In a friendly voice, Gabriel told Valdes that he could laugh if he wanted because it was his house. Valdes then turned to Gabriel and asked him if he wanted “to be the first one.” Valdes was angry and gesturing with his hands when he made this remark. Gabriel stared at Valdes, but stayed calm and did not respond.

Upon hearing the yelling, Valdes’s wife and son came out of their house and tried to calm him down. They grabbed him by the shoulders, and told him that he should not drink and should go home. Valdes argued with his wife, and then walked out of the backyard with his wife and son following him. As Valdes was walking away, he told his wife to go back inside because he had something he had to do. He told the men in an angry tone, “Now you’ll see.”

Valdes walked to the neighbor’s house. He previously had a rented a room in that house, and the neighbor continued to allow Valdes to park his truck in the driveway and to keep his tools in a backyard shed. Valdes did not go inside the house at that time, but instead walked toward the shed at a normal pace. After Valdes left, the men continued “partying” in Gabriel’s backyard. Acosta felt uncomfortable about Valdes’s behavior, however, and suggested to Gabriel that they go inside. A few minutes later, Ascension Avendano, Sergio De La Torre, and another man arrived at Gabriel’s house for the gathering. As the men were walking through the gate to enter the backyard, Valdes

returned. He angrily told Avendano to move aside, and then ran toward the area where the group of friends had gathered.

B. Shooting Death of Gabriel (Count 1)

When Valdes returned to Gabriel's backyard, he was carrying a black gun in one hand and a beer can in the other. From the neighbor's property, Valdes's wife yelled to Gabriel that Valdes had a gun and that Gabriel and his friends should go inside. As Valdes was walking toward the group, he said in an angry voice, "You thought I wasn't coming back? I told you I would kill you." He also said, "You guys thought I was playing. You want to be the first one?" Valdes approached Gabriel with the gun and stood directly in front of him. Gabriel got up from his chair and twice told Valdes to calm down. Valdes pointed his gun at Gabriel's chest and fired one shot from a distance of less than two feet. Gabriel immediately fell backwards to the ground. Valdes then fired another shot at Gabriel while he was on the ground. Gabriel died from the gunshot wound to his chest.

C. Pointing of Gun at Acosta (Count 5)

After shooting Gabriel, Valdes turned and pointed the gun directly at Acosta, who was standing by the backdoor of Gabriel's house. Valdes yelled at Acosta, "Do you want some, do you want some?" In response, Acosta said "no, no, I'm sorry," and asked Valdes not to shoot him. Acosta then ran inside the house.

D. Attempted Shooting of Cortez (Count 2)

Valdes next turned his gun on Cortez, asking him, "Do you want some?" Cortez ran from the area toward a parked car. Valdes followed, and fired the gun at Cortez two times. Cortez went behind the passenger side of the car, and told Valdes to

calm down. Valdes did not say anything in response, and instead fired a third shot at Cortez while standing near the driver's side of the vehicle. When Valdes began walking around the car, Cortez ran onto the street. Cortez continued running for three or four blocks, and then called 911.

E. Pointing of Gun at Avendano (Count 4)

Avendano was standing near the gate to Gabriel's backyard when he saw Valdes chasing Cortez. After Valdes shot at Cortez, he pointed his gun at Avendano. Valdes told Avendano he had no problem with him, but he wanted to know where the other men were. Valdes then walked quickly toward the street. Avendano went to the house next door to ask for help, but the neighbors told him to leave. While searching for a place to hide, Avendano noticed Valdes sitting in his truck in the neighbor's driveway with the gun on the seat next to him. Avendano approached Valdes and tried to calm him down. Valdes grabbed the gun, got out of the vehicle, and walked back toward Gabriel's property. While waving the weapon outside the house, Valdes yelled out, "Come out, you bitches. Are you guys really macho?" Avendano pleaded with Valdes to put the gun down and not get into any more trouble. Valdes replied that "these guys made me angry." He also said that they were from Jalisco, and "here they run into someone from Michoacán and they're going to be fucked."

F. Pointing of Gun at Kassandra Huerta (Count 6)

Gabriel's stepdaughter, Kassandra Huerta, was in her room when she heard a loud noise that sounded like fireworks. Sergio then ran into the room, hid in the closet, and told Huerta to call 911. Huerta was confused about the situation, and went to the front door of the house to see what was happening. When she

opened the door, Huerta saw Valdes standing on the sidewalk near the house. Valdes pulled out a gun, pointed it at Huerta, and said he was going to kill her and her family. Fearing for her life, Huerta shut the front door and locked it.

G. Pointing of Gun at Hak Ferree (Count 7)

Hak Ferree, the live-in boyfriend of Gabriel's mother-in-law, was in the garage when he heard a loud popping sound. He went to the front of the house and saw Valdes standing on the neighbor's driveway. Valdes pointed his gun at Ferree, and asked him, "Do you want me to kill you too?" Valdes then walked to Gabriel's driveway, again pointed the gun at Ferree, and said he was going to shoot him. After threatening to shoot Huerta as well, Valdes walked to his truck. He got inside his vehicle and drove away.

H. Fleeing a Pursuing Police Officer (Count 8)

Several Los Angeles County sheriff's deputies responded to Gabriel's residence. Deputy Anthony Santillo saw Valdes leaving the area in a pickup truck, and began following him in his marked patrol car. When Deputy Santillo initiated a traffic stop, Valdes pulled over, turned off his vehicle, and stayed in his seat. Deputy Santillo asked Valdes to stick his hands out the window, but Valdes did not comply. As other officers arrived to assist, Valdes restarted his truck and drove away. Deputy Santillo and two other patrol cars then pursued Valdes with their lights and sirens activated. Valdes drove at speeds between 40 and 45 miles per hour. At one point, he drove through a red light and then through a stop sign. Valdes then made a left turn onto the freeway from the far right lane. He drove 40 to 50 miles per hour on the freeway while the deputies continued to pursue him.

Valdes eventually stopped his truck at a freeway off-ramp, and exited his vehicle. The deputies detained him.

Sheriff's Detective Judith Luera searched Valdes's truck shortly after he was detained. She found a semi-automatic handgun with a holster and an empty magazine in the passenger seat, and another magazine in the side pocket of the holster. Detective Luera also found two empty beer cans and two larger empty beer bottles on the passenger side of the vehicle. She did not know how long these containers had been inside the vehicle, or when the beer was consumed.

III. The Defense Case

Valdes testified on his own behalf. According to Valdes, he and his family lived in a house at the back of Gabriel's property for two years. Valdes initially got along well with Gabriel and spent time socializing with him in the backyard. Gabriel invited him to social gatherings, which often included Sergio, Cortez, and Acosta. The men talked and drank alcohol together, though Valdes mostly stayed quiet and listened to the others speak. Valdes never had a problem with any of Gabriel's friends, but he felt that Gabriel became a different person when he was drunk.

Valdes's relationship with Gabriel began to change about a month after he and his family moved in. Gabriel had promised to make certain repairs to the back house, but he did not do so. In particular, Gabriel did not properly fix a broken door, failed to put a lock on a bathroom door, and installed air conditioning in the kitchen rather than the bedroom. Gabriel also tried to charge Valdes for making repairs that were his responsibility. When Valdes complained about these issues, Gabriel would make him feel "like [he] was less." Gabriel "just wanted it to be the way . . .

he said,” and “if he was going to fix something, he didn’t want [Valdes] to say anything about it.”

A few months after Valdes began living in the back house, Gabriel pointed a gun at his head and said that if Valdes wanted, he would kill him. When Valdes responded that he was going to call the police, Gabriel threatened to kill him if he did so. Valdes did not take any action at that time because he was afraid. On another occasion, Gabriel told Valdes that he was going to bring in someone to fight him to see if Valdes could defend himself. There were also many times when Gabriel said that he could hurt Valdes and his family, or kill Valdes if he did not do what Gabriel wanted. About a month before the shooting, Gabriel and Valdes were involved in a physical altercation. The incident began when Valdes came home early and found Gabriel inside his house. When Valdes asked Gabriel what he was doing there, Gabriel replied, “Don’t you know that all of this is my house.” The men then engaged in a fistfight. Valdes did not tell anyone about the fight because he was afraid for his family and was already looking for another place to live.

On August 19, 2016, Valdes arrived home from work between 5:30 and 6:30 p.m. Before he came home, he drank two small cans of Miller Light beer. Almaraz told Valdes that Gabriel was waiting for him. Valdes was surprised by this comment, but he gave Almaraz a 12-pack of beer to take to the group. When Valdes walked over to the gathering, Gabriel, Cortez, and Acosta invited him to join them and gave him a beer. The men started making fun of Valdes as soon as he sat down. Valdes initially stayed quiet. However, when Gabriel asked Valdes when he was going to build a fence for him, Valdes said he would only do so if Gabriel paid him. Gabriel replied that Valdes had to do whatever

he told him to do. The group laughed at Valdes, which angered him. Valdes tried to change the subject, telling Gabriel, “Why don’t you just get a beer?” In response, Gabriel said, “No idiot, not even my fucking wife is going to tell me what it is I need to do.” When Gabriel continued making offensive comments to him, Valdes “got lost” in his anger.

Valdes walked out of Gabriel’s backyard and went to the neighbor’s house where he kept a gun in a locked tool shed. As Valdes was walking to the neighbor’s house, his wife followed him and tried to calm him down. Valdes unlocked the tool shed, retrieved the gun, and then walked back to Gabriel’s house. When Valdes returned to the backyard with the gun, the group was still laughing at him, which made Valdes angrier. Feeling “lost,” Valdes shot Gabriel with the gun. At trial, Valdes testified that the shot was fired when Cortez tried to take the gun from him. Valdes acknowledged, however, that he shot Gabriel a second time, stating, “It must have been me. Who else?” Valdes denied that he ever tried to shoot Cortez or that he pointed the gun at anyone else.

After the shooting, Valdes went to his house to retrieve his wallet and then got inside his truck. He was planning to wait in his truck for the police to arrive, but once he saw a patrol car pass by, he decided to leave. Valdes drove down the street and made a right turn on Mountain Avenue. He pulled over when he saw the patrol car behind him. Valdes was going to get out of his truck, but he stayed inside the vehicle at the officer’s direction. Valdes thought the police had decided not to arrest him, so he drove away. He continued driving even when he saw the police pursuing him with their sirens activated. Valdes could not recall where he drove, but he eventually stopped his truck on the 210

freeway and surrendered. Shortly after the shooting, Valdes spoke with the police. He told a detective that the incident began because Gabriel said he was not a man, and he got tired of the group laughing at him throughout the night.

At trial, Valdes denied that he intended to shoot or kill anyone. He admitted that no one assaulted him or threatened him on the day of the shooting. He testified, however, that he feared for his safety and that of his family because he had been “mistreated too much.” When asked how his consumption of alcohol had affected him, Valdes stated, “Well, I mean, I can’t understand that because, I mean, you know, there are a lot of things that I can’t quite remember.” He also stated that the incident never would have happened if he had not been drinking. When asked about his intent when he went to the backyard with the gun, Valdes answered, “I did not know. I lost myself.”

IV. The Prosecution’s Rebuttal Evidence

Deputy Ray Lugo testified that he interviewed Valdes at the sheriff’s station the day after the shooting. After Deputy Lugo advised Valdes of his *Miranda*³ rights, Valdes told him that the incident occurred because he was “mad” and “tired of being humiliated.” Valdes also stated that he shot Gabriel because he was angry, and fired his gun at Cortez to scare him. When asked about the purpose of having a gun, Valdes replied that “the only reason you would pull out a gun was to use it.” Valdes never told Deputy Lugo that he was afraid for himself or his family, or that he believed Gabriel was going to harm him.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

V. Verdict and Sentencing

The jury found Valdes guilty of one count of first degree murder, one count of attempted willful, deliberate, and premeditated murder, four counts of assault with a firearm, and one count of fleeing a police officer while driving recklessly. The jury also found each firearm enhancement allegation to be true. The trial court sentenced Valdes to an aggregate term of 91 years and 8 months to life in state prison. The court also imposed a \$40 court operations assessment for each count (§ 1465.8), a \$30 court facilities assessment for each count (Gov. Code, § 70373), and a \$10,000 restitution fine (§ 1202.4). Valdes timely appealed.

DISCUSSION

I. Failure To Instruct On Voluntary Intoxication

On appeal, Valdes argues the trial court erred in failing to instruct the jury on the effect of voluntary intoxication on his ability to form the requisite specific intent for the crimes of first degree murder, attempted premeditated and deliberate murder, and fleeing a pursuing police officer while driving recklessly. He also asserts the alleged instructional error violated his federal and state constitutional rights to due process and a fair trial. Alternatively, Valdes contends that, to the extent he forfeited his instructional error claim on appeal, his trial attorney rendered ineffective assistance of counsel by failing to affirmatively request that a voluntarily intoxication instruction be given.

A. Relevant Background

At trial, defense counsel asked the court to instruct the jury on the theories of self-defense and imperfect self-defense. The court agreed to give an instruction on voluntary manslaughter

based on imperfect self-defense as a lesser included offense of murder, but refused to instruct the jury on self-defense as a form of justifiable homicide. The court explained that Valdes's testimony about the prior threats made by Gabriel was "enough to at least allow the jury to consider imperfect self-defense." However, the court did not believe "under any stretch of the imagination any juror could reasonably conclude that . . . any use of self-defense would be reasonable."

The court then noted that defense counsel had not asked for an instruction on voluntary intoxication. The court stated for the record that, if the defense had requested such an instruction, it would have denied the request based upon the evidence. Addressing defense counsel, the court explained: "[Valdes's] testimony was that he had a couple of Miller beers beforehand. He said he'd been drinking Miller Light earlier, small ones. He didn't count them. You asked him repeatedly how did the alcohol affect you, and he just never answered that. He couldn't answer. He said, well, there's a lot of things I can't remember. He never even gave an answer about how the alcohol may have affected him. By all accounts by the prosecution witnesses, he was not slurring, he was not stumbling. He was able to drive his car. He was able to do the things that's alleged he did, go get the gun, come back, shoot. And so . . . there would not be sufficient evidence to support a voluntary intoxication instruction, just so it's clear."

B. Relevant Law

"It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.]" (*People v. Diaz* (2015) 60 Cal.4th 1176, 1189.) In contrast, a

defendant is entitled to an instruction that pinpoints his or her theory of the case only upon request. (*People v. Nelson* (2016) 1 Cal.5th 513, 542; *People v. Ledesma* (2006) 39 Cal.4th 641, 720.) “[T]he court “need not give a pinpoint instruction if it is argumentative [citation], merely duplicates other instructions [citation], or is not supported by substantial evidence [citation].” [Citation.]” (*People v. Williams* (2016) 1 Cal.5th 1166, 1193.)

“Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.” (§ 29.4, subd. (b).) “[A]n instruction on voluntary intoxication, explaining how evidence of a defendant’s voluntary intoxication affects the determination whether defendant had the mental states required for the offenses charged, is a form of pinpoint instruction that the trial court is not required to give in the absence of a request. [Citation.]” (*People v. Bolden* (2002) 29 Cal.4th 515, 559; accord, *People v. Myles* (2012) 53 Cal.4th 1181, 1217 [“absent a defense request, the trial court had no duty to instruct on voluntary intoxication”]; *People v. Verdugo* (2010) 50 Cal.4th 263, 295 [“It is well settled that ‘[a]n instruction on the significance of voluntary intoxication is a “pinpoint” instruction that the trial court is not required to give unless requested by the defendant.’”].) Additionally, “[a] defendant is entitled to such an instruction only when there is substantial evidence of the defendant’s voluntary intoxication and the intoxication affected the defendant’s ‘actual formation of specific intent.’” [Citations.]” (*People v. Verdugo, supra*, at p. 295.) Accordingly, evidence that the defendant consumed alcohol is not sufficient to warrant a voluntary intoxication

instruction unless there is also evidence from which the jury reasonably could infer that the consumption affected the defendant in such a manner as to negate the specific intent or mental state required for the offense. (See, e.g., *People v. Roldan* (2005) 35 Cal.4th 646, 715-716, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 422, fn. 22; *People v. Williams* (1997) 16 Cal.4th 635, 677; *People v. Marshall* (1996) 13 Cal.4th 799, 848.)

“In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether “there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt. . . .” [Citation.] ‘On appeal, we likewise ask only whether the requested instruction was supported by substantial evidence—evidence that, if believed by a rational jury, would have raised a reasonable doubt as to’ an element of the crime in question. [Citation.]” (*People v. Mitchell* (2019) 7 Cal.5th 561, 583; see *People v. Salas* (2006) 37 Cal.4th 967, 983.)

C. The Failure To Instruct The Jury On Voluntary Intoxication Was Not Prejudicial Error

Valdes contends a voluntary intoxication instruction was warranted because there was substantial evidence that he was intoxicated at the time of the shooting, and that the intoxication had an effect on his ability to form the mental state required for the crimes of murder, attempted murder, and fleeing a pursuing police officer. In support of this claim, Valdes points to the testimony of the prosecution witnesses that he seemed to be intoxicated on the day of the shooting in a way that was different from the other times they had seen him drinking. Valdes also relies on his own testimony that he “lost” himself that day, and

that the incident would not have happened if he had not been drinking. Based on the record before us, we conclude that there was no prejudicial instructional error.

At trial, three prosecution witnesses—Acosta, Cortez, and Avendano—testified about their observations of Valdes’s state of intoxication on the day of the shooting.⁴ Acosta testified that, when Valdes first joined the gathering, it appeared he had been drinking. Acosta stated that he would not describe Valdes as being “fairly intoxicated” that night, but he seemed “different than the other times [Acosta had] seen him.” After Valdes sat down, he and the other men drank regular-sized cans of beer. When Valdes left the gathering, he walked at a normal pace and did not stumble. After he returned with a gun and shot Gabriel, Valdes had no difficulty turning his weapon toward Acosta. Valdes did not slur his words when he threatened Acosta and never appeared to lose control over his movements. Cortez similarly testified that, when Valdes arrived at the gathering, he “looked very calm.” Cortez denied that he told the police that Valdes appeared to be “very drunk.” Instead, Cortez recalled that

⁴ A fourth witness, Sergio De Le Torre, testified that Valdes tended to exaggerate and boast about himself whenever he drank alcohol. However, Sergio also stated that he did not know how Valdes was acting on the day of the shooting because Sergio arrived right before the shooting began and never saw Valdes that day. Sergio’s testimony about Valdes’s prior alcohol consumption did not support an intoxication instruction. (See *People v. Roldan, supra*, 35 Cal.4th at p. 716 [evidence that defendant was a habitual user of marijuana was inadequate to support a voluntarily intoxication instruction because it did not “constitute substantial evidence he was intoxicated or under the influence *at the time* of the crime”].)

the police asked him if Valdes was intoxicated, and that he responded that he “thought maybe, yes.” Avendano, who arrived as Valdes was returning with the gun, testified that Valdes appeared to be drunk or on drugs. He further stated that, at one point, Valdes “looked like he was falling over.” However, Avendano also testified that, over the course of the incident, Valdes appeared “to move in a normal fashion in the direction that he was going.”

Accordingly, while these witnesses described Valdes as possibly being intoxicated on the night of the shooting, their testimony did not demonstrate how such intoxication might have affected his mental state. Acosta, who provided the most detailed account of the drinking that night, merely described a social gathering in which all of the men were engaged in “casual drinking” and none of them was ever “falling-over drunk.” Acosta also specifically denied that Valdes ever stumbled, slurred his words, or lacked control over his movements. Although Avendano stated that Valdes looked like he was falling over at some point, he did not provide any context for this observation. Avendano’s testimony as a whole described a series of deliberate actions taken by Valdes in which he walked from place to place while pointing his weapon at various people and threatening to kill them. The testimony of the prosecution’s witnesses, though sufficient to establish that Valdes may have been intoxicated, did not provide substantial evidence that the “intoxication affected [his] ‘actual formation of specific intent.’” (*People v. Verdugo*, *supra*, 50 Cal.4th at p. 295; see *People v. Williams*, *supra*, 16 Cal.4th at p. 677 [voluntary intoxication instruction was not warranted despite evidence that defendant was “doped up” and “probably spaced out” because “there was no evidence at all that

voluntary intoxication had any effect on defendant's ability to formulate intent"]; *People v. Marshall, supra*, 13 Cal.4th at p. 848 [no error in failing to give intoxication instruction; "[a]lthough the offenses were committed . . . after [defendant] had drunk an unspecified number of alcoholic drinks over a period of some hours, evidence of the *effect* of defendant's alcohol consumption on his state of mind was lacking"].)

While Valdes contends that his own testimony provided substantial evidence regarding the effect that his consumption of alcohol had on his state of mind, the record does not support his claim. Valdes testified that, on the day of the shooting, he drank two small cans of beer before he went home and an unspecified amount of alcohol at the gathering. However, when asked how the alcohol that he consumed before he went home may have affected him, Valdes merely stated that "there were a lot of things" that he could not remember about that day. Similarly, when asked if he was feeling the effect of the alcohol at the moment he went to retrieve the gun from the tool shed, Valdes responded, "I don't remember that." Indeed, apart from his assertion that the incident never would have happened if he had not been drinking, Valdez did not offer any evidence to establish how his drinking might have negated the specific intent or mental state required for the charged crimes.

The record further reflects that, despite his testimony that he could not remember a lot of things about that day, Valdes provided a fairly detailed account of the events surrounding the shooting. At trial, Valdes was able to recall the tense exchange that he had with Gabriel shortly before the shooting and what each of them said. Valdes also was able to recall that, after this exchange, he walked over to the neighbor's house, retrieved his

gun from a locked tool shed, and then walked back to Gabriel's house and into the backyard. Valdes specifically recounted that the men "were still laughing at [him]" when he returned to the gathering with the gun. In addition, Valdes was able to describe how, after the shooting, he fled the scene while being pursued by the police. Among other details, he recalled which streets he drove on, what happened during the initial traffic stop, and where he was when he decided to surrender. Based on the totality of this record, the evidence was insufficient to warrant an instruction on voluntary intoxication. (See *People v. Ramirez* (1990) 50 Cal.3d 1158, 1181 [no substantial evidence supported a voluntary intoxication instruction where "[d]efendant purported to give a detailed account of all of the events of the night in question"]; *People v. Ivans* (1992) 2 Cal.App.4th 1654, 1662 [where defendant "gave detailed testimony about the events that morning, . . . [the] evidence was insufficient to show that [defendant's] drug use had affected his mental state"].)

Moreover, even assuming the trial court erred in finding that the evidence did not support a voluntary intoxication instruction, there is no reasonable probability that Valdes would have obtained a more favorable result absent the alleged error. (See *People v. Pearson* (2012) 53 Cal.4th 306, 325, fn. 9 ["[t]he failure to give a fully inclusive pinpoint instruction on voluntary intoxication did not . . . deprive [defendant] of his federal fair trial right"; thus, if instructional error is shown, reversal is required only if it is reasonably probable the jury would have reached a result more favorable to the defendant absent the error]; *People v. Larsen* (2012) 205 Cal.App.4th 810, 830-831 ["erroneous failure to give a pinpoint instruction is reviewed for prejudice under the *Watson* harmless error standard"; the

question in such circumstances “is not what a jury could have done, but what a jury would likely have done if properly instructed”].) The evidence overwhelmingly supported a finding that Valdes acted with premeditation, deliberation, and express malice when he went to retrieve his gun from the locked shed on his neighbor’s property and then returned to Gabriel’s property to confront the group of men who had offended him. The evidence also showed that, after asking the men which of them “want[ed] to be the first one,” Valdes approached Gabriel, shot him once in the chest from point-blank range, and fired a second shot as Gabriel was falling to the ground. Valdes then turned his gun toward the other men in the group and repeatedly shot at Cortez as he attempted to flee. In addition to providing a detailed account of the incident, Valdes admitted at trial that he committed the shooting because he “had just been mistreated too much.” Given the compelling evidence that Valdes’s consumption of alcohol did not appreciably affect his mental state in the commission of the charged crimes, any error in failing to instruct the jury on voluntary intoxication was harmless.⁵

II. Remand Is Not Required For A Hearing On Valdes’s Ability To Pay The Imposed Assessments And Fines
In *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), this court held that “the assessment provisions of Government Code section 70373 and Penal Code section 1465.8, if imposed . . . upon indigent defendants without a determination that they have

⁵ In light of this conclusion, we need not address Valdes’s claim that he received ineffective assistance of counsel based on his trial counsel’s failure to affirmatively ask the trial court to give a voluntary intoxication instruction.

the present ability to pay violates due process under both the United States Constitution and the California Constitution.” (*Dueñas*, *supra*, at p. 1168.) Accordingly, a trial court must conduct a hearing to ascertain the defendant’s ability to pay before it may impose these assessments. (*Ibid.*) We further held that, although section 1202.4 bars consideration of a defendant’s inability to pay when imposing the minimum restitution fine, in light of the due process issues involved when the defendant has shown an inability to pay, the trial court “must stay the execution of the fine until and unless the People demonstrate that the defendant has the ability to pay the fine.” (*Id.* at p. 1172.)

In supplemental briefing filed with the permission of this court, Valdes contends that *Dueñas* requires that the \$280 in court operations assessments and the \$210 in court facilities assessments imposed by the trial court be stricken. Valdes also requests that execution of the \$10,000 restitution fine be stayed unless and until the People establish that he has the ability to pay that fine. Among other arguments, the Attorney General asserts that Valdes has forfeited this claim on appeal by failing to object to the assessments and fines in the trial court.

We have previously declined to apply a general rule of forfeiture in these ability-to-pay cases because our decision in *Dueñas* announced a constitutional principle that could not reasonably have been anticipated at the time of sentencing. (See *People v. Castellano* (2019) 33 Cal.App.5th 485, 489 (*Castellano*).) As we explained in *Castellano*, at the time the defendant was sentenced, “*Dueñas* had not yet been decided; and no California court prior to *Dueñas* had held it was unconstitutional to impose fines, fees or assessments without a determination of the defendant’s ability to pay. Moreover, none of the statutes

authorizing the imposition of the fines, fees or assessments at issue authorized the court's consideration of a defendant's ability to pay." (*Ibid.*)⁶

Unlike the defendant in *Castellano*, however, Valdes was on notice and had an opportunity to object to the \$10,000 restitution fine based on an inability to pay. (See § 1202.4, subds. (b) [court may increase restitution fine beyond \$300 statutory minimum], (d) [defendant bears burden of demonstrating his or her inability to pay restitution fine in excess of statutory minimum].) Valdes never claimed he was unable to pay the restitution fine imposed. To be sure, raising an ability-to-pay objection to the \$10,000 restitution fine would not have precluded the trial court from imposing the \$280 in court operations assessments or the \$210 in court facilities assessments at the time of sentencing. However, Valdes's failure to object to the much larger restitution fine leaves no doubt that he would not have challenged the two assessment fees based on an inability to pay even if he had been aware of the constitutional principles announced in *Duenas*. Under these circumstances, Valdes is not entitled to a remand for a hearing on his ability to pay the imposed fines, fees, and assessments.

⁶ The intermediate appellate courts are currently divided as to whether such a claim is forfeited by the defendant's failure to raise it in the trial court prior to issuance of our decision in *Dueñas*. (Compare, e.g., *People v. Castellano*, *supra*, 33 Cal.App.5th at pp. 488-489 [issue not forfeited]; *People v. Johnson* (2019) 35 Cal.App.5th 134, 138 [same] with *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153-1155 [forfeited]; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464 [forfeited].)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.