Filed 3/28/11 P. v. Cochran CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. TAURIN CHARLES DUANE COCHRAN, Defendant and Appellant.	A124360 (Sonoma County Super. Ct. No. SCR-545309)

Taurin Charles Duane Cochran (appellant) appeals from a judgment entered after a jury convicted him of assault with a deadly weapon with personal infliction of great bodily injury (Pen. Code, §§ 245, 12022.7[1]). He contends the trial court: (1) provided an erroneous and inadequate response to the jury's question; and (2) failed to give a sua sponte instruction on the defense of accident. We reject the contentions and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

An information was filed October 1, 2008, charging appellant with assault with a deadly weapon (Pen. Code, § 245, count 1) with personal infliction of great bodily injury (§ 12022.7). At a jury trial, James Brad Slender testified that at about 6:30 p.m. on September 7, 2008, he was pulling into a parking lot in Railroad Square in Santa Rosa when he noticed "there was a lot of commotion going on." He saw a "large built gentleman with black hair" standing by a wagon and a "thin built lady" with "[b]lond,

[1] All further statutory references are to the Penal Code unless otherwise stated.

grayish bobbed hair" standing on the other side of the wagon.[2] There were six to eight people standing about 15 feet away from the man and woman. "[T]here was some yelling going back and forth," and at some point, the man raised his hand, made an "overhand movement," and was "going at" the woman. The woman stood there for a second, backed up twice, "got into her purse" and grabbed what appeared to be a phone and put it up to her ear. She then opened up her shirt and looked down, "stumbled across the street" to a coffeehouse and collapsed. It appeared there was blood on her chest. The man grabbed a bag or backpack that was on the wagon, walked in front of Slender's car towards a parked white van, then walked away. Slender could not identify a knife in the man's hand.

Slender felt he needed to do something because everyone except one man who had been standing around "scattered and left [the woman] to herself." Slender got his family out of his car, "put them inside [a] restaurant," and went outside again. He heard sirens as he stood by the woman who was laying on the curb. The police arrived and "worked on her and stood by her until the paramedics . . . got there." Slender told one of the officers what he had seen, then returned to the restaurant to "check on" his family. Approximately 10 or 20 minutes later, the officer came to the restaurant to ask Slender if he could "do an identification on a gentleman." The officer drove Slender about two blocks away in a patrol car. There, Slender saw a man whose size, build, hair color and facial hair were "all enough" to identify him as the man from Railroad Square, but he noticed the man was no longer wearing a hat he had been wearing earlier. When Slender said, "he doesn't have a hat on," the officer "radioed" other officers to ask "if there was a hat there. And that hat was sitting on the ground, and they picked the hat up for [Slender]." He identified the man as the one he had seen at Railroad Square. In court, he identified appellant as the man he saw that day.

---

[2] When asked to describe what the wagon looked like, Slender testified, "I think it's used [as] a table. It just has round wheels. . . . I never went back over there and actually looked at it. But I remember it had, like, wagon wheels on it." He testified the wagon was about four and a half feet tall and two and a half or three feet wide.

Carol Slender testified she also saw "some type of confrontation going on" as she and her husband drove into a parking lot. A man raised his arm towards a woman "and it appeared he had struck her with something because she went back and it looked like some . . . blood on her shirt . . . was coming through." When asked to "describe the arc of the blow," she testified, "if I remember, it went over his—it wasn't underneath, but he came over and hit her in the chest." The man was approximately six feet tall and the woman was "much smaller." The woman "looked like she first went . . . for something in her purse," then "went down," got back up, went across the street to a coffeehouse and laid down on the sidewalk. The man "just kind of put his backpack back on and just slowly kind of walked off" as if "nothing [had] happened."

Santa Rosa police officer Amanda Donahue testified she was dispatched to Flying Goat Coffee at approximately 6:30 p.m. on September 7, 2008. There, she saw a group of people gathered around a woman who was laying on her back on the sidewalk. Someone was using a blue towel to apply pressure to the woman's abdomen. The victim's handbag was nearby. Medical emergency services personnel arrived at the scene, examined the woman, and took her to the hospital. Santa Rosa police officer Philip Brazis testified he happened to be "right at that area" when he heard the dispatch call. He looked around and saw a man "flagging [him] down, frantically waving his arms" and trying to get Brazis's attention. Brazis asked, "Did somebody get stabbed?" and the man responded, "yes." The man pointed to the suspect who was walking down the street. The suspect was wearing "like a green khaki type of shirt," camouflage green shorts, a black leather hat and black boots and had a large backpack on. Brazis drew his pistol, got out of his car and ordered the suspect to the ground. Another officer responded to the location and removed a folding knife from the suspect's front pants pocket. Brazis asked the suspect if he had been in a disagreement down the street, and the suspect responded, "she spit in my face." In court, Brazis identified appellant as the suspect he detained that day.

William Ray Housley testified he was on a date with a woman named Amy at approximately 6:30 p.m. on September 7, 2008. They were sitting at a table outside of

Flying Goat Coffee located in Railroad Square when he heard a "screaming argument between two people" in the "parking lot area." The argument was between a man who was "approximately six foot two, 230 to 240 pounds, brown hair, wearing a cap and blue shirt, blue denim jeans" and hiking boots, and a woman who was "slender, five foot, five foot four, blond, white." He heard the man "holler at the female. . . . 'Touch me again, bitch, and see what happens.' " In response, the woman spat on the man. The man spat back at the woman then "struck her with his fist" in a way that "looked . . . like a jab." The motion was "[o]ut and downward" as his arm "came from his side, more of a roundhouse," and he made contact with the woman "between the left chest and breast area." The woman looked down and backed away from the man, walked towards the coffeehouse and sat down on the sidewalk about six feet away from where Housley and Amy were sitting. The man walked away. The woman seemed "kind of hysterical, confused, injured," and said, "I think I've been stabbed. Oh, my God, I've been stabbed. Help me. Help me." Housley saw blood coming from the woman's abdomen, and when the woman lifted her shirt, he saw smeared blood on her stomach. Someone got a towel and placed it on the woman's stomach. The woman laid down on the sidewalk and police officers and medical personnel arrived at the scene. The woman was transported away in an ambulance. In court, Housley identified appellant as the man who struck the woman.

Amy Rohn testified she was with Housley when she heard some yelling across the street. She looked over and saw a "group of people there of transient sort" and a man yelling at a woman and saying, "Hit me again, bitch." The woman was "a lot shorter than he was" and had "brownish-reddish hair" and was "very, very thin." After the man made that statement, "it looked like he had thrown something at her because he kind of . . . went forward with his arm. So I thought he threw a drink at her" because there was a "thrusting motion." When the woman walked over, asking them to help her, she was "clutching her mid area" and "it turned out that she was stabbed, and there was blood on her shirt." Someone found a towel and compressed the wound as the woman laid on the ground. Something that looked like a crack pipe and a "little switchblade" knife came out of the woman's purse. Someone grabbed the pipe. Before the man made the motion

at the woman, the woman had not appeared to be attacking the man "at all." Rohn called the police and officers arrived in five or ten minutes. In court, Rohn identified appellant as the man who made the motion at the woman.

Heather Ann McCrea testified she was the sister of the victim, Melissa Erin Verrill. She testified that the injury Verrill sustained in September 2008 required hospitalization. Verrill was in the hospital for a little over a week, then returned after leaving against doctor's orders. McCrea visited Verrill in the hospital "[m]ultiple times" every day. McCrea testified that Verrill had a substance abuse problem in the past but was never homeless and was not a violent person. While at the hospital, McCrea told hospital staff that Verrill believed she could read people's minds, the hospital was holding her hostage, and the man who stabbed her was possessed by the devil and needed help from the Catholic Charities. It was not common for Verrill to say she believed someone was possessed by the devil, and at the time she made these statements, she was on medication for her injury. McCrea testified that Verrill was living with her at the time of the stabbing. She saw Verrill leave the house approximately 20 minutes before the incident occurred, and Verrill was acting "[f]ine" at that time.

Sonoma County District Attorney's Office investigator David John Kahl testified he personally served a subpoena on Verrill directing her to appear in court for trial. When she did not appear, he tried to reach her by telephone and left two voice mail messages but had not heard back from her.

Richard Dean Zindler testified for the defense. He testified he has known appellant "a long time" and also knows Verrill. At about 3:00 or 4:00 p.m. on September 7, 2008, Zindler was in the driver's seat of a car, parked on the side of a museum located at Railroad Square, when he saw Verrill, who appeared "agitated." Verrill was arguing with a man whose name Zindler did not know and swung at that man "a little bit just batting around. Because she's small and people just take it." Verrill then "kind of went in on [appellant]," "jumping up to hit him on the shoulder." It was "typical" of Verrill to act this way because she is "an agitated person sometimes." Zindler did not hear "any words exchanged." He saw Verrill hit appellant but did "[n]ot

really" see appellant do anything in response. After Verrill hit appellant, she backed up and clutched her chest, and someone named Armando said, "she has a hole in her." "[E]verybody scattered," Zindler "immediately walked over there," and Verrill, who "had blood on her," "went over to the [Flying] Goat." Zindler testified that appellant was "[m]ore of a friend than [was Verrill]" because he was the only person among the group at Railroad Square that day who did not "do[] speed." Zindler had "not really" seen appellant be physically violent toward anyone and could not think of a situation in which he had been violent. He had not seen Verrill "really like beat somebody up or anything" and believed she was not physically violent "in the sense to really hurt somebody but more of just a playful I-can-do-what-I-want kind of thing." Zindler was aware appellant owned a knife but had never seen appellant use the knife for intimidation. He testified he had a prior felony conviction for first degree burglary. He was asked about but did not recall a misdemeanor conviction for second degree burglary.

Armando Ray Walter testified he was at Railroad Square on September 7, 2008, and was homeless at the time. He had known appellant and Verrill for approximately one year. That morning, he saw appellant there "around the wagon where we usually congregate in the morning." Appellant was wearing green camouflage shorts, black socks, a pair of black boots, a green or camouflage t-shirt, and a black leather hat. He did not appear to have used any substances, including alcohol. Walter had not known appellant to use methamphetamine during the year he had known him. He had seen appellant drink alcohol on occasion but appellant was "really the same person" whether or not he was under the influence of alcohol. Walter and appellant were talking about some friends "who had been doing methamphetamine," when Verrill, who appeared to have "been doing methamphetamine that morning," "barged into [their] conversation." Appellant had just used a knife to open a package for Walter and was "absentmindedly" "chipping away at the little piece of wood that was there" on the wagon. When appellant asked Verrill to go away because she was "one of the dope fiends," Verrill "turned into like a harpy," "went into a mad fury and stepped back and sp[a]t at him twice, lunging herself at him." Appellant "just close[d] his eyes and . . . steel[ed]himself [because] you

could see she was getting ready to spit on him." Walter did not see appellant use any striking or defensive motions at Verrill. Walter was "not sure" whether he saw appellant spit at Verrill but did not think he "retaliated." When Verrill spat at appellant and lunged at him, appellant's hands were "always . . . down on the . . . wagon." Walter did not hear appellant say something to the effect of, "Touch me again, bitch, and see what happens." After Verrill made contact with appellant, she stepped back, glared at appellant and Walter, and lifted her shirt. There was a "trickle of blood coming from her abdomen area," and appellant "[k]ind of just looked at her in surprise, I guess." Walter grabbed his bag, jumped on his bike, and "[g]ot the heck out of there" because he "did not want to be involved after that." Walter testified he had never seen appellant be aggressive toward anyone. He testified he was in custody and had prior felony convictions for possession of stolen property and grand theft.

Joshua Green testified he had known appellant for over 16 years. He testified appellant was a "[g]enerally happy" man and that he had not seen appellant be aggressive toward anyone. Green and appellant had spent a lot of time at Green's house playing video games and going to the park with Green's children. Green trusted appellant around his children and appellant often babysat for him. When appellant drank alcohol, he drank "[t]ill he can't drink [any] more," "to intoxication," and was "[l]ike a clumsy version of himself." He would be "very entertaining," "fun" and "jesting." Green testified he had known Verrill for a little over a year. Verrill was a "great person to be around" when she was sober, and Green's children loved to play with her. When Verrill was not sober, she was "very spacey," had a short temper, and was "not a very nice person to be around." Green had seen her yell and scream and hit one of his friends with a guitar.

Appellant testified that on September 7, 2008, he woke up at about 7 a.m. and walked across the street to a free kitchen near Railroad Square to use the restroom. He returned to the parking lot to "hang out" until the kitchen opened for lunch. He was wearing black leather boots, a black leather cap, camouflage shorts and a blue t-shirt that day. He had lunch at the free kitchen, and after finishing lunch at about 11:45 a.m., he and his friend went to a club that has a liquor store and a bar and bought a couple of 24-

ounce cans of beer. He drank one of the cans of beer at about 1 p.m., over the course of 15 to 20 minutes. At about 1:30 p.m., they returned to the club to buy some more beer and he drank one and one-half or two more 24-ounce cans of beer over the course of the next 40 minutes. At that point, he was feeling "[p]retty loose and relaxed." At about 3:00 or 4:00 p.m., after playing a couple of games of pool, they returned to the Railroad Square where he "usually hang[s] out." Several people were "congregate[d] around the wagon, hang[ing] out, smok[ing] pot, and drink[ing] beer." Appellant smoked "[a] little" marijuana and drank two 40-ounce bottles of beer between 4:15 and 6 p.m. At some point, Walter asked appellant if he had a knife to cut open a container for him. Appellant got his knife out and opened the container for Walter. Appellant then stood there chipping away at the surface of the wagon with his knife.

Appellant and Walter were talking about "how stupid we think tweakers are" when Verrill walked over. Appellant was feeling "kind of loose" and "still [had] a good buzz" when Verrill arrived but he was "[b]y no means falling down drunk." He "tend[ed] to drink almost every day" and his drinking had gotten a little worse in the preceding few months. Appellant had known Verrill for about a year. She was a "fairly level person" on occasion, but for the most part was "fidgety, aggravated, always moving, and . . . appear[ed] to be under the influence." Appellant told Verrill they were talking about "her and people like her . . . and that she should probably go away because she's tweaking." Verrill became "very irate" and started pushing appellant, telling him, "I don't do dope. I don't do dope." When he responded that he had seen her "do dope," she slapped him in the face. Appellant took a deep breath and counted to ten because he was becoming agitated and trying to remain calm. He did not say, "Touch me again, bitch, and you'll see what happens," but he did tell her to go ahead and touch him again. In response, Verrill slapped him, and appellant again took a deep breath and counted to ten, trying not to get mad. Verrill then went to the other side of the wagon but "still she was not leaving." When appellant told her to "just go," she spat in his face. Appellant reached across the wagon and pushed her, as a "knee-jerk reaction" to being spat on. He was not trying to hurt her but was trying to get her away from him so that she would not spit on

him anymore. He was able to reach over the cart and push her because he is six feet six inches tall and has a fairly long reach. As he argued with Verrill, appellant never brandished his knife at her and thought he had put it down. He did not know he still had his knife when he pushed her. After appellant pushed Verrill, it appeared she was "going towards her purse." She stepped back and started to turn away, and he thought she was finally going to leave. He did not see any blood on her and did not know she had been injured.

Appellant was "a little worked up about being sp[a]t on . . . and had a few dollars in his pocket" so he decided to go get another beer. As he picked up his backpack and turned to leave, he realized the knife was still in the hand that he had used to push her. He folded the knife, put it in his pocket, strapped on his bag and walked away. He testified that "[t]o the best of [his] knowledge," he did not stab Verrill. After learning Verrill was injured, he realized he "may have" had the knife in his hands at the time he pushed her. Appellant was arrested on his way to get another beer. He testified that he told police officers, "the bitch spit in my face," and that all he did was push her. He also told the police that Verrill was getting him so angry that he was clenching his teeth. He remembered sticking the knife in the wagon and might have also told the police that he "may have" done that to intimidate Verrill. He did not recall whether he admitted to police that he might not have let go of the knife. He testified he did not remember going into the police department, did not remember "being Mirandized," and did not remember entering the interview room, and "the next thing [he knew], [he was] in county blues in the booking room." The amount of alcohol he had consumed before these events occurred "had clouded [his] mind." However, he did remember "exactly what happened" during his argument with Verrill because "it happened before [he] was quite that drunk." He had finished drinking before Verrill showed up "[b]ut alcohol does not affect you instantly." He was not "entirely" in control of his faculties when Verrill spat on him, and his memory of the day was "patchy." He testified he does not "do anything drunk that [he] wouldn't do sober" and that his alcoholic intake had nothing to do with the physical

confrontation he had with Verrill. "As it turns out," he believed he did injure Verrill, and he was "crushed" because "[t]he last thing [he] want[s] to do is to hurt anyone."

Alice Jean Rylaarsdam testified she is a licensed marriage and family therapist and works part time as a psychiatric liaison at Santa Rosa Memorial Hospital. She testified she met with Verrill on September 15, 2008, and made notes regarding her assessment and also summarized her colleagues' contact with Verrill. Rylaarsdam testified that Verrill was suffering some mental symptoms during her hospital stay, including "exhibiting disorganized and delusional thought processes." At the time Verrill left the hospital against doctor's orders, she was "basically . . . not safe for herself or other people." Rylaarsdam did not meet with Verrill on September 7, 2008. She was aware that Verrill had suffered a sucking chest wound and had to undergo surgery twice.

The jury found appellant guilty of assault with a deadly weapon (a knife), causing great bodily injury. The court sentenced appellant to six years in state prison.

DISCUSSION

1. Response to the jury's question

a. Background

During deliberations, the jury submitted a note asking, "I understand that voluntary intoxication [does] not excuse an action. However, [does] voluntary intoxication excuse an impaired awareness of surroundings – ability to assess a threat? [¶] [Does] it excuse coming to a conclusion [that] would not be rational or reasonable [when] sober?" After holding a bench conference that was not reported, the court stated, "The jury has submitted a note asking a question . . . ask[ing] for the application of the evidence regarding Mr. Cochran's intoxication when considering the issues of self-defense and mistake. I proposed the following answer: [¶] 'As explained in both instruction 3406, page 13, and instruction 3470, page 13, the standard to be applied is what a reasonable person would have believed. The defendant's state of intoxication is not a factor to be considered in applying this standard.' " The court asked the parties whether they wished to "say anything else." Each party responded, "No." The court

asked whether the parties wished to have the jurors "call[ed] . . . in." The parties stated they did not, and the court's proposed answer was given to the jury.

CALCRIM 3406 (mistake of fact), as given to the jury, provided: "The defendant is not guilty of assault with a deadly weapon, or the lesser crime of assault, if he did not have the intent required to commit the crime because he reasonably did not know a fact or reasonably and mistakenly believed a fact. [¶] If the defendant's conduct would have been lawful under the facts as he reasonably believed them to be, he did not commit assault with a deadly weapon or the lesser crime of assault. [¶] If you find that the defendant actually believed that he did not have a knife in his hand and if you find that belief was reasonable, he did not have the intent required for assault with a deadly weapon or the lesser crime of assault. [¶] If you have a reasonable doubt about whether the defendant had the intent required for assault with a deadly weapon or the lesser crime of assault, you must find him not guilty of those crimes."

CALCRIM 3470 (self-defense), as given, provided: "Self-defense is a defense to assault with a deadly weapon and the lesser crime of assault. The defendant is not guilty of those crimes if he used force against the other person in lawful self-defense. The defendant acted in lawful self-defense if: [¶] 1. The defendant reasonably believed that he was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully; [¶] 2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; AND [¶] 3. The defendant used no more force than was reasonably necessary to defend against that danger. [¶] Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was imminent danger of violence to himself. Defendant's belief must have been reasonable and he must have acted only because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the defendant did not act in lawful self-defense. [¶] When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a

similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed. [¶] The defendant's belief that he was threatened may be reasonable even if he relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true. [¶] A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating. [¶] The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense. If the People have not met this burden, you must find the defendant not guilty of assault with a deadly weapon or the lesser crime of assault."

b. Standard

"After the jury have retired for deliberation, . . . if they desire to be informed on any point of law arising in the case, . . . the information required must be given . . . ." (§ 1138.) "The court has a primary duty to help the jury understand the legal principles it is asked to apply." (*People v. Beardslee* (1991) 53 Cal.3d 68, 97.) "This does not mean the court must always elaborate on the standard instructions. Where the original instructions are themselves full and complete, the court has discretion under section 1138 to determine what additional explanations are sufficient to satisfy the jury's request for information. [Citation.] Indeed, comments diverging from the standard are often risky. [Citation.]" (*Id.* at p. 97.) However, a court "must do more than figuratively throw up its hands and tell the jury it cannot help. It must at least *consider* how it can best aid the jury. It should decide as to each jury question whether further explanation is desirable, or whether it should merely reiterate the instructions already given." (*Ibid.*)

c. Appellant's contentions

Appellant contends the trial court erred in instructing the jury that his "state of intoxication [wa]s not a factor" because it "effectively precluded the jury from considering how his intoxication impacted" his state of mind, which was relevant to his "level of culpability and his asserted defenses" and to whether the prosecution had

proven the knowledge and intent elements of the crime. Assuming, without deciding, that appellant did not waive his claim by failing to object below, we conclude there was no error.

"No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his or her having been in that condition. Evidence of voluntary intoxication *shall not be admitted to negate the capacity to form any mental states for the crimes charged*, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act." (§ 22, subd. (a), italics added.) "Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required *specific intent* . . . ." (*Id*., subd. (b), italics added.) Assault is a general intent crime. (*People v. Colantuono* (1994) 7 Cal.4th 206, 215-216.) Thus, even though assault requires "actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another," (*People v. Williams* (2001) 26 Cal.4th 779, 790), a jury is not allowed to " 'consider evidence of [a] defendant's intoxication in determining whether he committed assault' " (*id.* at p. 788).

Appellant cites *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 (*Humphrey*), for its holding that a jury must "judge[] reasonableness 'from the point of view of a reasonable person in the position of defendant . . . .' " In *Humphrey*, the Supreme Court held that expert testimony regarding battered women's syndrome was relevant and admissible under Evidence Code section 1107 to establish the reasonableness of the defendant's belief that it was necessary to kill in self defense. (*Id.* at pp. 1076-1077.) The Supreme Court did *not* state the expert evidence could be used to redefine the "reasonable person" standard as one who suffered from battered women's syndrome or, as appellant appears to argue here, one who was voluntary intoxicated at the time of the offense. In fact, the Court cautioned, "we are not changing the standard from objective to subjective, or replacing the reasonable 'person' standard with a reasonable 'battered woman' standard. Our decision would not, in another context, compel adoption of a ' "reasonable gang member" standard.' . . . [T]he ultimate question is whether a

reasonable *person*, not a reasonable battered woman, would believe in the need to kill to prevent imminent harm." (*Id*. at p. 1087; see also *People v. Jefferson* (2004) 119 Cal.App.4th 508, 519 ["[t]he issue is whether a 'reasonable person' in defendant's situation, seeing and knowing the same facts, would be justified in believing he was in imminent danger of bodily harm," not whether a person like him, i.e., a person with a mental illness, would have had reasonable grounds for believing he was in danger].) The trial court did not err in instructing the jury, "The defendant's state of intoxication is not a factor to be considered in applying [the reasonable person] standard."

Appellant also contends the court's response was inadequate because it did not attempt to "clarify what question the jury was asking" even though the question was "somewhat inartful," and because the court failed to give "meaningful consideration" to the question. We disagree with appellant's characterization of the jury's question. The question quite clearly asked about the relationship between appellant's voluntary intoxication and his ability to assess a threat or to reach rational or reasonable conclusions. After an unreported bench conference, the court provided the parties with its proposed response and an opportunity to speak. The parties did not object to the proposed response and neither the court nor the parties expressed any confusion by any of the language in the jury's question.

We also disagree the court failed to give "meaningful consideration" to the jury's question. Appellant's argument is based primarily on the fact that the court "simply refer[red] the jury back to" other instructions. As noted, however, a court is not required to elaborate on standard instructions, and where the original instructions are full and complete, the court has discretion to determine what additional explanations, if any, are necessary. (*People v. Beardslee*, *supra*, 53 Cal.3d at p. 97.) Here, the court resolved the jury's questions by referring to two full and complete instructions and explaining that voluntary intoxication was not a factor to be considered in applying the reasonable person standard set forth in those instructions. The court fulfilled its duty, and no error or prejudice appears.

Sua sponte instruction on the defense of accident

Appellant contends the trial court erred in not giving a sua sponte instruction on the defense of accident. We disagree.

Generally, even without the request of either the prosecution or defense, a criminal trial court has a duty to instruct a jury on those principles of law relevant to the jury's determination and its understanding of the case. (*People v. Hood* (1969) 1 Cal.3d 444, 449; *People v. St. Martin* (1970) 1 Cal.3d 524, 531.) However, the trial court's duty to instruct sua sponte on affirmative defenses is more limited than, for example, its broad duty to instruct a jury on lesser included offenses of the crimes charged. (*People v. Breverman* (1998) 19 Cal.4th 142, 157; *People v. Barton* (1995) 12 Cal.4th 186, 195.) The trial court's limited duty does not obligate it to " 'ferret out all defenses that might possibly be shown by the evidence' since such a rule would " ' " 'put trial judges under pressure to glean legal theories and winnow the evidence for remotely tenable and sophistical instructions.' " ' [Citation.]" (*People v. Breverman*, *supra*, 19 Cal.4th at p. 158.) Thus, a court's duty to sua sponte deliver jury instructions regarding a defense arises only "if there is substantial evidence of the defense and if it is not inconsistent with the defendant's theory of the case. [Citation.]" (*People v. Wilson* (2005) 36 Cal.4th 309, 331.) Evidence of a defense is sufficiently substantial to trigger a trial court's duty to sua sponte instruct the jury if it is "evidence that a reasonable jury could find persuasive." (*People v. Barton*, *supra*, 12 Cal.4th at p. 201, fn. 8.) It has also been defined as "evidence sufficient for a reasonable jury to find in favor of the defendant . . . ." (*People v. Salas* (2006) 37 Cal.4th 967, 982.)

CALCRIM 3404 (accident) provides: "[The defendant is not guilty of [the crime] if (he/she) acted [or failed to act] without the intent required for that crime, but acted instead accidentally. You may not find the defendant guilty of [the crime] unless you are convinced beyond a reasonable doubt that (he/she) acted with the required intent." We conclude that regardless of whether there was substantial evidence requiring the trial court to sua sponte give an instruction on the defense of accident, any error in not doing so was harmless under any standard because the court instructed the jury under

CALCRIM 3406 (mistake of fact) that appellant lacked the requisite intent if the jury found he "actually believed that he did not have a knife in his hand" and "that belief was reasonable." The court further instructed the jury that if it had a "reasonable doubt about whether the defendant had the intent required for assault with a deadly weapon or the lesser crime of assault, [it] must find him not guilty of those crimes." Thus, in essence, the trial court had already instructed the jury that appellant was not guilty if he "accidentally" (or mistakenly) believed the knife was not in his hand. We read the instructions as a whole rather than in isolation (*People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1185), and we presume the jury understood and properly applied the instructions given by the court (*People v. Lewis* (2001) 26 Cal.4th 334, 390 [" '[j]urors are presumed to be intelligent, capable of understanding instructions and applying them to the facts of the case' "]). We have no doubt the jury understood it was required to find appellant not guilty of assault with a deadly weapon if it found he accidentally or mistakenly believed he did not have the knife in his hand when he made contact with the victim.

DISPOSITION

The judgment is affirmed.

_____
McGuiness, P.J.

We concur:

_____
Siggins, J.

_____
Jenkins, J.