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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SIMON FAEED RANTEESI,

Defendant and Appellant.

A115311

(Solano County
Super. Ct. No. FCR201373)

Appellant Simon Ranteesi brutally killed Milia Ranteesi, his estranged wife, bludgeoning her to death in the presence of their children. A jury convicted him of first degree murder by use of a deadly weapon, and he was sentenced to 26 years to life in prison. On appeal, appellant makes two contentions: (1) the trial court abused its discretion when it precluded his expert witnesses from testifying as to the specific matters that formed the basis for their opinions that he suffered from delusional disorder; and (2) the trial court erred in rejecting his request that the jury be instructed on unconsciousness by involuntary intoxication because the evidence showed he was in a Paxil-induced manic state when he committed the killing. We conclude that the first contention has merit, but that the error was harmless, and that the second contention has no merit. We therefore affirm.

I. Background

On August 8, 2002, a felony complaint charged appellant with the murder of his estranged wife, Milia Ranteesi.[1] (Pen. Code, § 187, subd. (a).)[2] It was also alleged that appellant used a deadly and dangerous weapon in committing the murder. (§ 12022, subd. (b)(1).)

On September 25, 2002, the court suspended the criminal proceedings against appellant pursuant to section 1368, and appointed Drs. Purna C. Datta and Murray Eiland to evaluate his mental competency to stand trial. Based on the resulting reports, as well as a report prepared by Dr. Carlton Purviance, a psychologist retained on defendant's behalf, the court found appellant incompetent to stand trial and committed him to Napa State Hospital for treatment.

After many months of treatment, the medical staff at Napa State Hospital certified appellant as having been returned to competency, and a mental health hearing was scheduled pursuant to section 1372. At the December 19, 2005 hearing, two members of the medical staff opined that appellant was competent to stand trial while two other witnesses, Dr. Purviance and a lawyer, disagreed. The court found appellant competent within the meaning of section 1367 and reinstated the criminal proceedings.

Following a January 4, 2006 preliminary hearing, appellant was charged by information with one count of murder (§ 187, subd. (a)) by use of a deadly and dangerous weapon, specifically a metal welder's stand. (§ 12022, subdivision (b)(1).)

Trial commenced on July 5, 2006 and continued, with occasional interruption, until July 19, 2006, when the jury returned a verdict of murder in the first degree by use of a deadly weapon. Appellant was sentenced to 25 years to life on the murder charge with an additional year for the deadly weapon enhancement, for a total of 26 years to life.

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[1] Because appellant, Milia, and their children all share the same last name, we shall, for purposes of clarity and with respect, refer to the Ranteesi family members, with the exception of appellant, by their first names.

[2] All further statutory references are to the Penal Code except where otherwise noted.

This timely appeal followed.

II. Evidence At Trial

A. Prosecution's Case

In August of 2002, appellant lived at 849 Topaz Circle in Vacaville with his four children: a daughter, 15-year-old Rachal, and three sons, Tony (then 17 years old), Jeremiah (then four years old), and Josiah (then two years old). Rachal did not have a good relationship with appellant. The children's mother, Milia, had separated from their father in June of 2001 and had not lived in the family home for about a year. However, Milia, who worked night shifts at the Yolo County jail, would come to the house after she got off work to sleep and take care of the two younger boys while appellant was at work.

On August 6, 2002, Rachal came home around 2:00 or 3:00 p.m. in the afternoon to an empty house. About a half an hour later, her father and three brothers came home after having been out running errands. Unbeknownst to appellant, Rachal had made plans for Milia to take her to her maternal aunt's house in Burlingame for a long weekend, so Rachal could see her aunt and cousins. When appellant arrived home, he learned of Rachal's plans and "wasn't happy about it" because he wanted her to stay home and help take care of her younger brothers. Rachal also testified that appellant did not want her to go because he thought "they [Milia's family] would just put things in [her] head to make [her] go against him."

Rachal and appellant got into an argument over her plans, with both of them yelling loudly. Rachal had packed a bag for the trip, and appellant and Rachal fought over the bag, appellant repeatedly unpacking it and Rachal repacking it each time he did so. Appellant also told Rachal four or five times that Milia would "pay for it" if she came and picked her up. According to Rachal, over the past year, perhaps as long as the past two years, appellant had frequently said that Milia would "pay for it" for "going against him."

After the argument had gone on for a while, appellant went downstairs, and Rachal called Milia because appellant had been pushing her around. Shortly thereafter, Milia arrived at the house, pulling up in front of the driveway and calling Rachal on her

cell phone to tell her she was outside. Rachal grabbed her bag, ran outside to her mother's car, and put her bag in the trunk. Appellant followed her outside and began arguing with Milia through the open passenger window, telling her that "she would pay if she went against him" and that Rachal was not going on the trip.

At some point during the argument, appellant reached inside the car through the open passenger window and grabbed Milia's cell phone from the center console, demanding to know, "Who is listening into this conversation" and "Who do you think you are going to call?" He smashed the phone on the back end of one of his work trucks parked in the driveway, breaking it into pieces, prompting Milia to get out of the car and ask for her cell phone back. As the two argued over the phone, Rachal's two younger brothers ran out of the house, so she put them in the backseat of the car to prevent them from getting hurt. In the meanwhile, Rachal was yelling at her mother to get in the car and go because she was scared of appellant.

Appellant then reached into the back of one of his pickup trucks and grabbed a metal jack. As he was doing so, Tony, who had come outside when he heard yelling and had been observing the argument from a few feet away, attempted to calm appellant and held his hand down, preventing appellant from removing the jack from the truck.

Rachal, realizing she had forgotten to pack a shirt that she wanted to bring on the trip, got out of the car and ran back inside the house to retrieve it.[3] Appellant again picked up the jack, this time chasing Milia around the car with it in his hand. When he caught up with her, he pushed her down and beat her over the head numerous times with the jack. Tony tried to push him off but was unsuccessful, so he ran to get help. From inside the house, Rachal heard her mother scream and then Tony yell, "God, no," so she grabbed a phone and ran back outside.

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[3] The testimony on this point was inconsistent, with Rachal testifying that she had gotten into the car after putting her bag in the truck and Tony testifying that she never got in the car.

By the time Rachal was outside, appellant was walking up the driveway towards the house, so she hid from him behind the trucks on the driveway. After he passed by, she ran down to the street to where her mother was lying on the ground and called 911. Appellant came back out a short time later, drying his hands on a towel. Tony, having since run back to where Milia was lying, testified that appellant then "just stood there," while Rachal described him as "content." Tony yelled at his father, "What the hell is wrong with you? You just killed my mom. What is wrong with you?" Appellant, who was "real calm," just responded, "It's over." Rachal yelled at him, "You killed Mom. You killed Mom," to which appellant responded, "Oh, well."

Vacaville Police Sergeant Richard Elm, responding to a domestic violence call, was the first officer on the scene. When he arrived at the Ranteesi house, he saw appellant standing between two vehicles parked in front of the house. When the officer made eye contact with him, appellant put his hands in the air in a surrender position. When Officer Elm asked if he was the husband, appellant responded, "Yes." He then noticed Milia on the ground and asked, "Did you do this?" Appellant "placid[ly]" responded, "No." According to Officer Elm, appellant did not appear to be overwrought, angry, or upset. Appellant was then handcuffed without incident.

After other officers arrived and took custody of appellant, Officer Elm went over to Milia, who had "massive wounds to her face, and there was blood running down into the gutter." There was a metal object on the ground near Milia's head that had what appeared to be blood on it. Milia was pronounced dead at the scene.

The prosecution called several witnesses who testified about conversations they had had with appellant about his relationship with Milia. Denise Hall, who has friends that live in the Topaz Circle neighborhood, frequented a nearby park. In late 2001 or early 2002, she was at the park with her child and some friends when she encountered appellant, who was there with Jeremiah and Josiah. Ms. Hall was pushing one of appellant's boys and another child on a swing when appellant came over and struck up a conversation with her. He first thanked her for swinging his son and then quickly began talking about his wife leaving him, asking, "How can my wife leave me?" and "Do you

think it's okay my wife can leave me?" Appellant repeatedly said, "She has to respect me," and also commented, "I don't know why American women do this. Back in my country, . . . I can do whatever I want with a woman. If I want to kill her, I can, and nobody says a thing." When one of appellant's sons hurt himself on a swing and started crying, appellant told him, "Stop crying or I'm going to go home and beat your mother." Ms. Hall found the conversation uncomfortable, so she excused herself and walked away to join her friends.

Similarly, Ashik and Ramona Pavagadhi took their children to the neighborhood park on August 5, 2002, the day before Milia's death. Appellant was there, talking on his cell phone in a somewhat aggressive manner and appearing "a little distraught and upset" after hanging up. As his young sons were playing with the Pavagadhi's daughter, appellant struck up a conversation with them, talking about his wife and saying he was going to kill her. Mr. Pavagadhi asked where his wife was, and appellant responded that he did not know because she was no longer with him, but if he knew where she was, he was going to kill her. Appellant asked Mr. Pavagadhi, who was East Indian, if he was Farsi, and then asked what would happen in his culture if his wife left. Mr. Pavagadhi observed that appellant now lived in America where there are rules; appellant responded that in his country, if his wife did something like that, she would be killed. Stating that he was still upset, appellant reiterated that if he found his wife, he would kill her.

David Levin, who lived on Topaz Circle, offered similar testimony. He had occasional conversations with appellant while they were outside with their respective children. On one occasion during the summer of 2002, they had a longer conversation than usual, and appellant matter-of-factly told him he and Milia were separated and she was no longer living in the house. He quoted a Bible passage about when a wife is not respectful to her husband or leaves him for another man, there was a price to pay. Appellant repeatedly commented, "What's a man supposed to do?"

B. The Defense

Appellant took the stand in his own defense. He testified that he was born in Jerusalem and came to the United States when he was 24 years old. After arriving in the

United States, he married Milia and they had four children. For years, appellant worked as a welder to support the family while Milia attended school to study criminal justice. After graduation, she found employment as a correctional officer for the Yolo County Sheriff's Department.

Sometime in 2001, a neighbor informed appellant that he had seen Milia and a man together at a restaurant, "holding hands like lovers." Appellant confronted Milia, who initially denied that she was having an affair, claiming instead that she was helping a fellow employee with paperwork. She later admitted, however, that she had fallen in love with a man named Naseem Al-Harbi and wanted a divorce. She described Al-Harbi as a former Iraqi soldier who once worked as Saddam Hussein's bodyguard but then later worked for the FBI and was now seeking political asylum.

After learning this, appellant was scared because Al-Harbi was a "Muslim terrorist" who was terrorizing his family and wanted to take his wife. Because he was afraid an Iraqi soldier was going to kill his wife and children, he went to the FBI but was told there was nothing they could do if Al-Harbi had no relationship to the events of September 11, 2001. Consequently, appellant "just kept going on with [his] life." He and Milia worked out an arrangement whereby he remained in the home with the four children, and Milia, who worked nights at the jail, came during the day to take care of the younger children while appellant worked.

Appellant met Al-Harbi on one occasion when Milia introduced them to each other at a coffee shop. She told appellant that Al-Harbi had a bigger penis than him and could therefore beat him up.

Because of appellant's fears that Al-Harbi was going to kill his wife and children, he became very emotional, "sad and crying," feelings he shared with a lot of people, such as people at the neighborhood park and work as well as his pastor. One woman in whom he confided at the park suggested he go see a doctor, which he did sometime around July of 2002. Appellant explained to the doctor that he was sad about Milia and was crying a lot, so the doctor prescribed Paxil and told him it would make him happy. He began

taking the medication in July of 2002 as prescribed. He would take one pill around 5:00 p.m. and it would make him sleepy.

On the afternoon of August 6, 2002, appellant came home around 3:00 p.m. and found Rachal in her bedroom packing a suitcase to go to her aunt's house for a few days. Appellant told her she could not go because he needed her around the house. According to appellant's testimony, he was "[k]ind of" angry and frustrated and was just telling her, "You can't go. I need you. You cannot go." As they were having this discussion, appellant kept unpacking Rachel's luggage, and she kept packing it back up again. Rachel called Milia and had appellant talk to her, and it was agreed that Rachal would not leave. Appellant denied he was upset during the confrontation but claimed he was "very nervous." After he and Milia agreed Rachal would not leave, he went downstairs, took a Paxil, and fell asleep on the dining room floor.

Some time later appellant was awakened by Tony, who told him that Milia was there. He went outside and saw Rachal putting her luggage in the trunk of Milia's car and Milia sitting in the driver's seat. He walked up to the car, took the luggage out, and told Rachal she was not leaving. Rachal was "[k]ind of" yelling, saying she was going and putting the luggage back in. After getting out of the car and walking to the trunk, Milia told Rachal to call the police, so appellant reached into the front seat of the car, grabbed Milia's cell phone, and broke it on the side of one of his work trucks parked in the driveway.

Suddenly, according to appellant, Milia just "came at" him and "fell down on the ground." The next thing he knew, Tony was telling him, "Look what you did." He did not know what he had done, but he saw Milia lying on the ground. Because he started feeling scared, he went inside to put water on his face, and then went back outside to look at Milia. He stood there "waiting for the police to explain to [him] what happened."

When a police officer arrived, appellant raised his hands, and the officer handcuffed him and put him on his knees. He was then taken to the police station. While there, appellant felt scared and worried about Milia, "thinking about the boyfriend and how come he's [an] Iraqi soldier . . . ."

On cross-examination appellant acknowledged that he had been arrested in November of 2001, but denied he threatened to kill or punch Milia, threatened to kill Rachal if she called the police, or threw Josiah at Milia. He claimed that these were all lies told by Milia in order to have him arrested.

Appellant also denied that he was mad at Milia about her leaving him. He testified "I was sad and crying. I wasn't angry." And, he explained, "In the United States, wom[e]n do whatever they want, and she wanted to leave me, and we had agreed on the divorce, and we had agreed I take the house and the kids, and I wasn't mad at her or nothing. I was just sad."

As to the events on August 6, 2002, appellant denied that he got angry with Rachal over her plan to go to her aunt's house. He claimed instead that he just unpacked her bag and told her she could not go, denying that he ever told her there would be consequences if Milia took her away. And when Milia had arrived to pick Rachal up, despite telling him on the phone she would not come to the house, he was not angry but simply took her bag out of the car: "It was no yelling, nothing. I just didn't want her to leave. I took the bags back out of the trunk." When asked if he was mad when he took the phone out of Milia's car and broke it, he claimed he was "angry at the phone." He also testified he never argued with Milia before she "came in at" him, and he had no memory of "hitting her or anything." When asked whether he remembered what happened from the time when Milia got out of the car until she was lying on the ground, appellant responded: "I don't remember. I lost it. I became totally insane." He also denied going inside to wash off his bloody hands, saying that he only went inside to put water on his face because he was getting scared "[b]ecause what happened from the effect of the drug." He explained that "[t]he Paxil caused [him] to get scared."

Appellant also denied that he spoke to any neighbor while waiting for the police, denied that he responded, "Oh, well" when Tony said, "Look what you did," and denied that he responded, "Well, it's all over now" when Rachal said, "You killed her." Instead, according to appellant, nobody talked to him and everyone kept quiet while he was waiting for the police to arrive.

Defense counsel also presented testimony from three of appellant's co-workers from the company where he worked as a welder. They consistently testified that he had been a good employee until about a year prior to Milia's death, when his performance changed. He no longer focused on his work, his productivity declined, and he spent his work time talking obsessively about one particular subject, sometimes to himself and other times cornering co-workers who were forced to either ask him to stop talking or simply walk away.

Defense counsel also called two of appellant's neighbors. Jeffrey Belt lived down the street from appellant and was passing by appellant's house around 5:00 p.m. on the day of Milia's death when he saw appellant and Milia arguing on the sidewalk in front of their house. As Belt described it, Milia "was pretty much yelling and screaming and waving her arms towards" appellant.

Vernon Gandy, a retired minister, was also a neighbor of appellant's and they talked on many occasions "neighbor to neighbor." Some time during the year prior to Milia's death, appellant sought out Gandy's counsel about his personal problems, and Gandy would refer to the Bible, often quoting Scripture concerning forgiveness and loving.

Mike McCamey, a pastor at a church in Fairfield who often counseled parishioners in times of personal crisis, also testified. A number of months prior to August of 2002, McCamey met appellant when he started attending worship services and Bible study classes. At some point, McCamey learned appellant was struggling with some family issues and approached appellant and offered to speak to him privately. Appellant was responsive to this suggestion and they later met in McCamey's office at the church. Appellant, whom he described as "very friendly, very open," was concerned about the condition of his family and seemed frightened.

McCamey also accompanied appellant to the county courthouse the day before Milia's death. According to McCamey, appellant was aggressively pursuing reconciliation, including, against Milia's wishes, putting his hand on her knee and verbally attempting to convince her to return home. In response, Milia told him

something to the effect of, "The children are afraid of you. I'm afraid of you, and I will not consider talking to you about coming home until you get your anger under control."

The defense also called four expert witnesses who offered testimony regarding appellant's mental state. The first was Dr. Carlton Purviance who, as noted above, was a clinical and forensic psychologist retained by the public defender's office in 2002 to assess appellant's competency to stand trial. He met with appellant on five separate occasions, the first interview occurring on August 12, 2002, just six days after Milia's death, and lasting approximately one hour. Dr. Purviance described appellant's behavior during that visit as "frightened," "very anxious," and "pressured." Appellant's speech was "very rapid, very intense," and "rambling": "[T]he topics of his speech often went from one to another without much connectiveness between them. He would begin a speech and then he would just sort of ramble from topic to topic without there being a good link between them." Additionally, he "expressed a number of delusional, paranoid delusional beliefs . . . . He was very frightened. In fact, terrified would be a better word." According to Dr. Purviance, appellant was "very concerned" about a particular "set of ideas" to which he kept going back.

Dr. Purviance conducted a second interview on September 5, 2002, and found appellant, who had been refusing psychiatric treatment in jail, "even more alarmed and frightened" than during the initial visit. Appellant related an incident in which he found a bar of soap in his cell and expressed to Dr. Purviance that it had been planted there as a sign his life was in danger. His speech was still "pressured" and it was very difficult for Dr. Purviance to get information from him, because he was "completely preoccupied with these delusional ideas that he was, you know, going to be harmed; that he was being persecuted."

After the two meetings, Dr. Purviance concluded that appellant was suffering from persecutory-type delusional disorder. When defense counsel asked Dr. Purviance to describe the specific characteristics of appellant's delusions that led to the diagnosis, the prosecutor objected, which objection the trial court sustained, explaining, "I think you're limited to a description from this mental health professional as to the diagnosis of, in this

case, Mr. Ranteesi, but not the information—this jury is not going to hear the information that forms the basis for the opinion by this expert. I don't think that that is appropriate based on the abolition of the diminished capacity defense."

Dr. Purviance's testimony then continued. He met with appellant a third time on November 13, 2002, testifying that his demeanor "was very much the same. Again, he was . . . highly agitated, pressured, actively psychotic, speech was rambling. Affect was one of intense fear and anger. He was very convinced of his delusional beliefs. He did not think there was anything wrong with him psychiatrically, and there had been little or no significant change over that 13 weeks." Several clinical signs, including that fact that appellant was denying that he was mentally ill, indicated to Dr. Purviance that appellant was not malingering. According to Dr. Purviance, someone who is malingering attempts to exaggerate a psychiatric disorder, while appellant was "outraged that it was even thought there might be something wrong with him mentally." At the conclusion of the meeting, Dr. Purviance was of the opinion that appellant suffered from delusional disorder with grandiose and persecutory features. Dr. Purviance explained that in someone suffering from such a disorder, "areas of a person's functioning can be fairly intact, but certainly within that set of delusional ideas, cognitive processes are greatly distorted" and could affect the person's mental state on a continuing basis. Delusional disorder usually grows in scope and can affect an individual's judgment.

On cross-examination, Dr. Purviance acknowledged that he was aware of an alleged domestic violence incident of November 11, 2001, and that appellant had not been prescribed Paxil until July of 2002. Dr. Purviance conceded, therefore, that Paxil could not have been an excuse for the 2001 domestic violence incident. He also agreed that the 2001 incident reflected a lot of anger by appellant against Milia and Rachal.

As to his diagnosis of appellant, Dr. Purviance conceded that controversy exists concerning the practice of rendering a retrospective diagnosis, or diagnosing what someone's mental state was on a date in the past, admitting "You can reliably diagnose what you see at the moment. It's difficult to diagnose a person for some distant date". He also agreed that a diagnosis is increasingly controversial the further back in time it

goes. When the prosecutor asked, "[Y]ou weren't back there in time like on August 6th of the year 2002 when he killed his wife to see what he looked like, what he was saying, how he was acting?", Dr. Purviance answered, "That's correct." He also conceded that someone suffering from a delusional disorder can still get angry at someone and want to kill him or her, can figure out ways to kill, and can accomplish the killing.

Dr. Purviance also acknowledged on cross-examination that Al-Harbi was a real individual who formerly served as an Iraqi soldier in Saddam Hussein's army and was in jail while seeking asylum. He admitted that because these facts were true, appellant was not delusional about these matters.

On redirect, however, Dr. Purviance clarified that those were not the sole facts concerning Al-Harbi that lead to appellant's delusional disorder diagnosis. He explained: "[Appellant] believed that this man was a double agent working for not only Saddam Hussein, but Osama Bin Laden and was a double agent working for the CIA and the FBI, and this man had been planted in the Yolo County jail to have a coercive influence over his wife." He further detailed appellant's delusions: "Well, as time went on, he suspected that his wife had been medically altered as a result of this plot; that a bar of soap had been planted in his cell a few days after he got to the jail which was a sign to him that he was going to be killed."

The second expert witness to testify on appellant's behalf was Dr. Kyung Minn, who in August of 2002 worked part-time as a psychiatrist in the Solano County jail. Dr. Minn saw appellant on August 8, 2002 in a 20- to 40-minute meeting, during which time he found appellant "calm and coherent." He concluded, based on beliefs of appellant's that were "possible, but . . . very, very unlikely," that he was suffering from delusional disorder with a paranoid aspect.

Appellant's third expert was Dr. Purna Datta, a clinical psychologist with a Ph.D. in neuropsychology with cognitive behavior therapy. Following a referral by the court to evaluate appellant for his competency to stand trial, Dr. Datta spent two and a half hours interviewing and testing appellant on October 9, 2002. During the interview, Dr. Datta initially found appellant to be agitated and angry, but he became more cooperative as the

interview progressed. The doctor did not detect pressured speech or rambling thoughts, instead finding appellant's speech "clear and understandable," although becoming rapid at times when he spoke about Milia.

Based on the interview, Dr. Datta concluded appellant suffered from "pretty severe" delusional disorder with a persecutory aspect. He believed appellant had been suffering from the disorder for many years, possibly as far back as the second year of his marriage to Milia in 1985. He also diagnosed appellant as suffering from depression. Dr. Datta suggested to appellant that he needed medication to treat his disorder, but appellant refused, also revealing that he had taken Paxil prior to the incident.

On cross-examination Dr. Datta acknowledged that, in order to render a diagnosis of delusional disorder, he first had to rule out that appellant's behaviors were caused by a chemical substance or medication. He agreed with defense counsel when asked, "So in this particular case, you were certain that whatever problems you thought he may have had were not caused by the Paxil, true?" He also agreed with defense counsel that one of the aspects of appellant's delusional disorder was that Milia was having an affair outside the marriage. Dr. Datta disagreed, however, with defense counsel's question as to whether someone with delusional disorder can still intend to kill somebody.

Dr. Stewart Shipko, a psychiatrist with subspecialties in the diagnosis and treatment of panic disorder and in the adverse effects of Selective Serotonin Reuptake Inhibitors (SSRIs), was the final expert on appellant's behalf. Having been asked by defense counsel to conduct an evaluation of appellant, Dr. Shipko reviewed the police report pertaining to Milia's death, the medical examiner's report and autopsy, multiple psychological evaluations, police reports on two prior domestic violence incidents, and the videotape of a three-hour police interview of appellant shortly after his arrest. Dr. Shipko also interviewed appellant on June 9, 2006, although he terminated the interview after half an hour because he did not feel he was getting reliable and credible answers from appellant.

Dr. Shipko began by describing the potential adverse side effects of SSRIs, a category of antidepressants that includes Paxil. The most severe side effects include

agitation, depression, mania, disinhibition, suicide, aggression, and addiction, and typically occur within the first month of taking the drug. As to Paxil specifically, Dr. Shipko prescribed it frequently in the 1990's, but by 2002 he stopped prescribing it for new patients because the incidents of side effects, particularly addiction and withdrawal problems, were too high. In his experience, doctors do not take the time to thoroughly describe the risks associated with SSRIs to their patients. He conceded on cross-examination, however, that he never met the doctor who prescribed Paxil to appellant and did not know his practices.[4]

Dr. Shipko then offered his opinion concerning appellant's mental state at the time he killed Milia: "I thought that he had hostility, aggression, and impulsivity that emerged out of a Paxil-induced manic state. You would refer to that technically as a substance-induced mood disorder of the manic type." When asked by defense counsel, "In your experience, are one of the side effects loss of memory as a result of taking Paxil?", Dr. Shipko responded, "Memory loss can occur short-term and long-term. And when individuals commit particularly violent acts, they generally do not have a recall of doing that."

On cross-examination, Dr. Shipko acknowledged that he had never "interviewed a killer who was on an antidepressant like Paxil at the time of the crime and said they couldn't remember." He also acknowledged that, while he has prescribed Paxil to several hundreds of patients over the years, none of his patients killed anyone while on Paxil or other antidepressants. He also agreed with the prosecutor that appellant "had a lot of reasons in his own mind to kill his wife other than Paxil," commenting, "He had a history of being abusive." And he agreed with the prosecutor that "[a]bsent any other factors, a general person taking Paxil has the ability to make a plan to kill" and carry it out. Finally, Dr. Shipko conceded that he never asked appellant, "Did you know that you were killing your wife?" The prosecutor subsequently inquired, "Did you ask him if he

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[4] The doctor was deceased at the time of trial.

remembered killing his wife," to which Dr. Shipko responded, "I think I did ask him," recalling that appellant said no.

C. Prosecution's Rebuttal Evidence

Rachal took the stand a second time to describe a domestic violence incident that occurred on November 11, 2001 at the Ranteesi home. Milia and appellant were arguing about the divorce and whether or not she could take the children. Appellant told her that if she tried to take the children, he would kill her. When Rachal got involved in the argument, appellant pushed her up against the wall "a couple of times." He then pushed Milia's head into the living room couch while yelling at and threatening her. Rachal got on top of appellant and bit him, and appellant responded by telling her he would kill her and that he was "going to poke [her] mother's eyes out." When he finally got off of Milia, she tried to get away but ended up on the floor; while she was down, appellant picked Josiah up over his head and "tossed him at her." Josiah started crying and Milia caught him. When Rachal attempted to call the police, appellant threatened her, saying he would kill her and Milia if she did so. Rachal nevertheless made the call, while appellant and Milia continued to argue. Appellant unsuccessfully attempted to leave the house before the police arrived. Rachal gave a statement to the police that was consistent with her testimony in court.

On cross-examination Rachal admitted that, months after the incident, she wrote a letter requesting that the charges against appellant be dropped, claiming that the accusations she made were false. Confirming that her testimony in court was the truth, Rachal explained that she lied in the letter because she was "scared" and appellant "kept threatening us."

Alfredo Morales, a neighbor who lived down the street, also testified in rebuttal. He was at home one day when someone banged on his door and said that appellant had just killed his wife. He went outside and crossed the street to where appellant was standing over Milia, who was lying on the driveway. Her face was disfigured and there was blood on the driveway. Morales said to appellant, "Simon, what did you—what have you done?" Appellant, who looked "dazed" and "pale" as if he was "in shock,"

responded, "I killed her. I killed my wife." Morales then asked him, "What about the children?" Appellant responded, "You watch over them. You take care of them." Morales, who waited next to appellant until the police arrived, did not recall appellant putting his hands up like he was surrendering.

III. Discussion

A. The Trial Court's Erroneous Ruling Barring Appellants' Expert Witnesses from Testifying as to the Matters That Formed the Bases for Their Opinions Constituted Harmless Error

Appellant first contends that the trial court improperly barred certain of his expert witnesses, namely Drs. Purviance and Datta, from testifying as to the specific matters—appellant's delusional beliefs—that formed the bases for their opinions that he suffered from delusional disorder, and in doing so, deprived him of his rights to due process and a meaningful opportunity to present his defense. This ruling, he contends, was based on the court's mistaken belief that the abolition of the diminished capacity defense rendered the information irrelevant and therefore inadmissible. Appellant claims that, to the contrary, the evidence was relevant to demonstrate that he suffered from a mental disorder and "did not form the relevant specific intent."

As a preliminary matter, the People respond that appellant waived his claimed due process violations "[b]y failing to raise his claims of due process and the right to present a defense in the trial court . . . ." However, none of the cases on which the People rely provides the claimed support for this proposition. Indeed one case, *People v. Partida* (2005) 37 Cal.4th 428, 437, validates appellant's position that his federal due process claims have not been forfeited because he "is permitted to argue on appeal that an additional legal consequence to the court's ruling was a violation of his federal due process rights." We therefore turn to the merits of appellant's claim.

We review the trial court's ruling regarding the admissibility of evidence for abuse of discretion (*People v. Alvarez* (1996) 14 Cal.4th 155, 201), and conclude that the trial court abused its discretion in precluding the experts from identifying the specific matters that supported their diagnoses.

Prior to the commencement of trial, the prosecutor filed a motion in limine seeking to limit the scope of appellant's expert witnesses' testimony to allow their opinions but not any hearsay statements on which the opinions were based, arguing, "The defense cannot use an expert as a vehicle to gain introduction of otherwise inadmissible hearsay statements." The court granted the motion, observing that an expert cannot circumvent the abolition of the diminished capacity defense "by calling it something different" and cannot "get in ordinary hearsay testimony that they rely on from other experts."

As detailed above, during trial Dr. Purviance opined that appellant was psychotic and suffered from delusional disorder of a persecutory type. The following colloquy then ensued:

"[Defense counsel]: What specific characteristics about Mr. Ranteesi's delusions did you base your opinion on that made you believe it was a delusional disorder as opposed to something else?

"[Dr. Purviance]: Well, the content of the delusions, and I'll describe those for you, if you want—clearly had the themes of him being at risk. He thought he was going to be killed; that he—that people were orchestrating plots against him. So you know, the content of his delusions are what helped me to arrive at what type of a delusional disorder it was.

"[Defense counsel]: And can you give us an example of something that you felt was a delusion as opposed to something that would have occurred in real life?

"[Dr. Purviance]: With respect to Mr. Ranteesi?

"[Defense counsel]: With respect to Mr. Ranteesi.

"[Prosecutor]: I'm going to object to the detailed basis for the opinion.

"The Court: Sustained.

"[Defense counsel]: I would note that it is a delusional disorder as opposed to other mental disorders, psychotic disorders, and that what the individual says is basically the basis for the opinion rendered.

"The Court: Well, that's fine, but I think you're limited to a description from this mental health professional as to the diagnoses of, in this case, Mr. Ranteesi, but not the

information—this jury is not going to hear the information that forms the basis for the opinion by this expert. I don't think that that is appropriate based on the abolition of the diminished capacity defense."

Similarly, Dr. Datta testified generally that appellant had "delusional thoughts" such as he was "jealous that [his] wife is having a relationship with somebody else, that kind of thoughts . . . ." He also testified that it was of a persecutory type, explaining that appellant "thought that his wife was setting up cameras" so she could show their children that she was a nice person while he was not. However, he did not relate specific statements from appellant that formed the basis of his opinion that appellant was suffering from a delusional disorder.

Expert opinions during trial are governed by Evidence Code sections 801 and 802. Evidence Code section 801 allows an expert to offer an opinion that is "related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact," and is "based on matter . . . perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert" in forming his or her opinion. In accordance with Evidence Code section 802, the expert "may state on direct examination the reasons for his [or her] opinion and the matter . . . upon which it is based, unless he [or she] is precluded by law from using such reasons or matter as a basis for his [or her] opinion."

In *People v. Gardeley* (1996) 14 Cal.4th 605, 618-619, the California Supreme Court, referring to what it described as "well-settled principles," detailed the scope of testimony permitted under Evidence Code sections 801 and 802: "Expert testimony may also be premised on material that is not admitted into evidence so long as it is material of a type that is reasonably relied upon by experts in the particular field in forming their opinions. [Citations.] Of course, any material that forms the basis of an expert's opinion testimony must be reliable. [Citation.] . . . . [¶] So long as this threshold requirement of reliability is satisfied, even matter that is ordinarily *inadmissible* can form the proper basis for an expert's opinion testimony. [Citations.] And because Evidence Code

section 802 allows an expert witness to 'state on direct examination the reasons for his opinion and the matter . . . upon which it is based,' an expert witness whose opinion is based on such inadmissible matter can, when testifying, describe the material that forms the basis of the opinion. [Citations.] [¶] A trial court, however, 'has considerable discretion to control the form in which the expert is questioned to prevent the jury from learning of incompetent hearsay.' [Citation.] A trial court also has discretion 'to weigh the probative value of inadmissible evidence relied upon by an expert witness . . . against the risk that the jury might improperly consider it as independent proof of the facts recited therein.' " (Accord, *People v. Thomas* (2005) 130 Cal.App.4th 1202, 1209-1210; *People v. Fulcher* (2006) 136 Cal.App.4th 41, 56-57 [an expert can relate the information on which he or she relied because "an expert is subject to cross-examination about his or her opinions and additionally, the materials on which the expert bases his or her opinion are not elicited for the truth of their contents; they are examined to assess the weight of the expert's opinion."].)

From these authorities, it is clear to us that appellant's expert witnesses should have been permitted to identify the specific matters that led to their diagnoses.[5]

In reaching a contrary result, the trial court relied on the abolition of the diminished capacity defense, reasoning, as noted above, that an expert should not be permitted to circumvent abolition of the defense "by calling it something different." The

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[5] Appellant and the People disagree as to the characterization of the testimony appellant's experts were precluded from introducing. Appellant argues that "the[] delusions were not hearsay as they were obviously not being offered for truthful content of any sort—quite the opposite . . . ." On the other hand, the People submit that appellant's "statements to Dr. Purviance about his delusions were in fact inadmissible hearsay because they were offered for the truth of an implied assertion." While appellant is correct on this point, it is a moot debate since Evidence Code sections 801 and 802 allow an expert to relate statements, *hearsay or otherwise*, if they were matters on which the expert relied in formulating his or her opinion. (*People v. Thomas, supra,* 130 Cal.App.4th at p. 1209 ["The rule is long established in California that experts may testify as to their opinions on relevant matters and, if questioned, may relate the information and sources on which they relied in forming those opinions. Such sources may include hearsay."].)

court was correct that the defense has been abolished. (See *People v. Saille* (1991) 54 Cal.3d 1103, 1111-1112; §§ 25, subd. (a), 28, subd. (b).) However, evidence of a defendant's mental state remains "admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged." (§ 28, subd. (a). See also *People v. Wright* (2005) 35 Cal.4th 964, 978; *People v. Steele* (2002) 27 Cal.4th 1230, 1253.) This is precisely the purpose for which appellant sought to introduce the evidence: to establish that he was in a Paxil-induced, delusional state such that he could not formulate the malice aforethought required for first degree murder.

In urging that the trial court reached the correct result, the People assert "an expert may testify on what he based his opinion, such as his interview of appellant and review of medical records, but not the details of what he learned from appellant during the interview," citing in claimed support *People v. Montiel* (1993) 5 Cal.4th 877, 918-919 (*Montiel*). They offer no explanation as to how the case supports their proposition, however, and in fact *Montiel* undermines their argument, as it is completely consistent with *People v. Gardeley, supra,* 14 Cal.4th at pp. 618-619, *People v. Thomas, supra,* 130 Cal.App.4th at pp. 1209-1210, and *People v. Fulcher, supra,* 136 Cal.App.4th at pp. 56-57: "An expert may generally base his [or her] opinion on any 'matter' known to him [or her], including hearsay not otherwise admissible, which may 'reasonably . . . be relied upon' for that purpose. [Citations.] On direct examination, the expert may explain the reasons for his [or her] opinions, including the matters he [or she] considered in forming them. However, prejudice may arise if, ' "under the guise of reasons," ' the expert's detailed explanation ' "[brings] before the jury incompetent hearsay evidence." ' [Citation.]." The Court then proceeded to explain that hearsay problems can usually be cured by a limiting instruction or, where that is not enough, the hearsay can be excluded

in the court's discretion pursuant to Evidence Code section 352. (*Montiel, supra,* 5 Cal.4th at pp. 918-919.)[6]

The People also rely on *People v. Campos* (1995) 32 Cal.App.4th 304 (*Campos*), claiming it "supports the trial court's decision to preclude Dr. Purviance from detailing appellant's statements to him." Not so. In *Campos*, defendant was certified by the Department of Corrections as a mentally disordered offender (MDO), and petitioned for a jury trial to challenge that certification. At trial, the prosecution called a psychiatrist to testify concerning defendant's mental health. Relying in part on the reports of other medical personnel, the expert opined that defendant met the MDO criteria and testified that the other medical personnel agreed with her. (*Id.* at p. 307.) A jury found him to be an MDO. (*Id.* at p. 306.)

On appeal, defendant challenged the expert's reliance on other medical evaluations, "argu[ing] that the conclusions of these nontestifying experts were inadmissible hearsay." (*Campos, supra,* 32 Cal.App.4th at p. 307.) The Court of Appeal agreed, holding that the expert was properly allowed to testify that she relied on the reports in forming her opinions, but that the trial court erred "when it allowed her to reveal their content on direct examination by testifying that each prior medical evaluation agreed with her own opinion." (*Id.* at p. 308.) The Court explained: "Psychiatrists, like other expert witnesses, are entitled to rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient's mental state. [Citations.] On direct examination, the expert witness may state the reasons for his or her opinion, and testify that reports prepared by other experts were a basis for that opinion. [Citation.] [¶] An expert witness may not, on direct examination, reveal the content of reports prepared or opinions expressed by nontestifying experts. ' " 'The reason for this is obvious. The opportunity of cross-

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[6] In a footnote, the People half-heartedly claim, "Evidence Code section 352 was an independent ground for excluding the details of appellant's delusions, even if it was not specifically urged." They make no attempt to argue how they would have been unduly prejudiced by the evidence, and we thus consider this argument waived.

examining the other doctors as to the basis for their opinion, etc., is denied the party as to the whom the testimony is adverse.' " ' [Citations.]" (*Id.* at pp. 307-308.) The Court also agreed with defendant that the trial court erred in admitting the nontestifying experts reports into evidence. (*Id.* at p. 309.) The Court affirmed, however, concluding the errors did not cause a miscarriage of justice. (*Id.* at pp. 309-310.)

The situation here is readily distinguishable. First, the statements at issue were not, as explained above, hearsay. (See fn. 5, *ante.*) Second, the excluded evidence was defendant's delusional beliefs, not reports prepared by nontestifying experts.

Nevertheless, despite concluding that the trial court abused its discretion in precluding appellant's experts from detailing appellant's beliefs that formed the bases for their opinions, we find no basis for reversal of the jury's decision as a result of this error, because we conclude it was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

According to appellant, had the trial court permitted his experts to properly testify, the jury would have learned the true extent of his delusional disorder. Drawing from the written evaluations and competency hearing testimony of Dr. Purviance, appellant describes the specific delusional beliefs the jury might have learned had the doctor's testimony not been unduly limited: "Dr. Purviance had determined that appellant had an entire delusional system based on a conspiracy between his wife and her lover Al-Harbi in which both the United States and Al Queda [*sic*] were involved. Appellant believed that a 'major crime' and criminal conspiracy had begun when the 'secretary of Iraq's lawyer' called his home and talked to his wife. Thereafter, the United State government and Yolo county authorities had set in motion its plot: it had placed Naseem Al-Harbi, a double agent working for Al-Queda [*sic*] as well as the FBI/CIA, in the Yolo county jail for the purpose of gaining control over his wife. Their means to accomplish control had been to place a penis inside of his wife, which appellant had discovered during a pelvic examination. Appellant had called the local FBI office in Fairfield to tell them about his wife and Al-Queda [*sic*], but they were unconvinced of appellant's claims. To get the FBI's attention, appellant went personally to the office to tell them about the threat, but

this proved no more successful. The plot to control his wife had been effective, however, as she devoted her energies to the conspiracy to have him incarcerated where he was certain to be killed by Al-Harbi."

Appellant continues, describing additional details of what Dr. Purviance learned from appellant during their meetings: "Appellant's delusional system included a complete inability to understand how anyone could fail to comprehend that Milia's death had come to pass because of the purposeful planning by the CIA and FBI in conjunction with Saddam Hussein and Osama bin Laden rather than any action on his part, despite the fact that he had been witnessed by many persons to have inflicted the fatal blows. Appellant's lack of contact with reality led him to believe that the conspiracy against him was further proved by the size of the penis owned by the inmate purposely lodged in the cell adjoining appellant's. The government had also placed a razor in a bar of soap in his cell, which was a warning to him that he was going to be killed. Appellant had constructed a shrine in the cell which included symbolic and pictorial representations of his wife, his children, the Queen of England, Thomas Jefferson, and the Christian religion."

Appellant also points to Dr. Datta's testimony omitting details regarding appellant's delusions that the doctor related in his written evaluation, delusions he was forbidden to share with the jury at trial: "[H]e testified only in general terms that appellant had 'delusions.' . . . Dr. Datta did not relate to the jury the details he had learned in support of his diagnosis, such as appellant's statements about the conspiracy that had started all of the problems between him and his wife, nor his stated belief that Al-Harbi had millions of dollars in a Swiss Bank from his double agent work which could fund the conspiracy, and that Yolo county was responsible for destroying his family."

Appellant submits that not only did the prosecutor succeed at keeping this vital evidence from the jury, but he was also "very adroit in capitalizing on the 'diagnosis only' opinion testimony." According to appellant, by limiting the testimony of appellant's experts, the jury learned only that he believed Milia was having an affair with

a man named Al-Harbi, a former Iraqi soldier in Saddam Hussein's army who was seeking political asylum. According to appellant, the prosecutor then established that these beliefs were in fact true such that, by definition, the beliefs could not be delusional, leaving the jury with no reason to believe he suffered from a mental disorder.

Admittedly, the fine details of some of appellant's delusions were excluded from the record as a result of the trial court's erroneous ruling. However, the jury learned a great deal more about appellant's beliefs than simply that Milia was in love with a former Iraqi soldier. From appellant's own testimony, the jury learned about his fears that Al-Harbi was a "Muslim terrorist" who was terrorizing his family and wanted to kill them and that appellant sought help from the FBI. From Dr. Purviance, the jury learned that appellant believed Al-Harbi was a double agent working for not only Saddam Hussein, but Osama bin Laden, the CIA, and the FBI and had been planted at the Yolo County jail in order to have a coercive influence over Milia. They also learned from the doctor that appellant believed there was a conspiracy to have him killed. And they learned that appellant believed Milia had been surgically altered as a result of this conspiracy, and that a bar of soap planted in his cell was a sign that he was going to be killed. This evidence informed the jury of the gist of appellant's delusional beliefs, affording them an accurate picture of his mental state. In combination with the overwhelming evidence of appellant's guilt, including testimony from multiple sources that he said he wanted to kill Milia, the omission of some specifics did not contribute to the jury's verdict. (*People v. Wilder* (1995) 35 Cal.App.4th 489, 502.)

B. The Trial Court Did Not Err in Rejecting Appellant's Request for Jury Instructions Regarding Unconsciousness Due to Involuntary Intoxication

Appellant also contends the trial court violated his rights to a trial by jury and due process by denying his request for instructions on unconsciousness by involuntary intoxication (CALCRIM 3425 and CALCRIM 3427).[7] His request for the instructions

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was based on his theory that his attack on Milia was driven by the Paxil he was taking for depression. As appellant explains it, Dr. Shipko testified to the adverse side effects of Paxil as detailed above, and then opined that at the time appellant killed Milia, he "was in a Paxil-induced manic state as a result of an adverse reaction to his prescribed medication and was not in control of his responses to events." In further support appellant notes his own testimony that when he was prescribed Paxil, his doctor did not inform him of the potential adverse side effects, that he had "gone insane" and "lost it" when he attacked Milia, and that he had "not acted with an awareness of his actions" instead waiting for the police to arrive and tell him what had happened.

Pursuant to section 26, subdivision (4), unconsciousness is a complete defense to a criminal charge except where caused by voluntary intoxication. (§ 26, subd. (4); *People v. Heffington* (1973) 32 Cal.App.3d 1, 8.) As the California Supreme Court recently summarized in *People v. Halvorsen* (2007) 42 Cal.4th 379, 417: "Unconsciousness, if not induced by voluntary intoxication, is a complete defense to a criminal charge. [Citations.] To constitute a defense, unconsciousness need not rise to the level of a coma or inability to walk or perform manual movements; it can exist 'where the subject physically acts but is not, at the time, conscious of acting.' [Citation.] If the defense

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[7] CALCRIM 3425 provides, "The defendant is not guilty of _____ if he/she acted while legally unconscious. Someone is legally unconscious when he or she is not conscious of his or her actions. [Someone may be unconscious even though able to move.] [¶] Unconsciousness may be caused by . . . . [¶] The People must prove beyond a reasonable doubt that the defendant was conscious when he/she acted. If there is proof beyond a reasonable doubt that the defendant acted as if he/she were conscious, you should conclude that he/she was conscious. If, however, based on all the evidence, you have a reasonable doubt that he/she was conscious, you must find him/her not guilty."

CALCRIM 3427 provides, "Consider any evidence that the defendant was involuntarily intoxicated in deciding whether the defendant had the required (intent/ [or] mental state) when he/she acted. [¶] A person is *involuntarily intoxicated* if he or she unknowingly ingested some intoxicating liquor, drug, or other substance, or if his or her intoxication is caused by the force, duress, fraud, or trickery of someone else, for whatever purpose[, without any fault on the part of the intoxicated person]."

presents substantial evidence of unconsciousness, the trial court errs in refusing to instruct on its effect as a complete defense. [Citations.]" Substantial evidence in this context means " ' " 'evidence from which a jury composed of reasonable [people] could have concluded' " that the particular facts underlying the instruction did exist.' " (*People v. Lemus* (1988) 203 Cal.App.3d 470, 477, quoting *People v. Wickersham* (1982) 32 Cal.3d 307, 324.) Having conducted an independent examination of the record under a de novo standard of review (*People v. Manriquez* (2005) 37 Cal.4th 547, 581, 584), we conclude it does not contain substantial evidence to support the defense instruction.

As noted, appellant relies exclusively on his own testimony and that of Dr. Shipko to support this claim. We have detailed Dr. Shipko's testimony above and need not repeat it at length here. In summary, Dr. Shipko identified the potential adverse side effects of SSRIs such as Paxil, and then opined that at the time appellant killed Milia, he was experiencing a "substance-induced mood disorder of the manic type" —"[H]e had hostility, aggression, and impulsivity that emerged out of a Paxil-induced manic state."

This testimony, we conclude, does not support appellant's assertion that "his conscious mind, having been altered by an unknown and predictable side effect of a medically prescribed substance known to cause precisely these effects, was not in control of his body." Nor do we find, contrary to appellant's claim, any testimony where Dr. Shipko purportedly opined that appellant's "altered mental state affected his ability to form any of the mental states required for the charged crime." While Dr. Shipko testified that appellant was in a Paxil-induced manic state at the time he killed Milia, he never went one step further—a step necessary here—and said that as a result of this manic state, appellant was not acting under his own volition and lacked awareness of what he was doing. Instead, Dr. Shipko acknowledged that appellant, who had a history of abuse, had a lot of reasons in his own mind for wanting to kill Milia. And, he agreed, that a person taking Paxil had the ability to make and carry out a plan to kill.

As to appellant's own testimony, he directs us to his statements that he went "insane," "lost it," and did not remember killing his estranged wife. However, a defendant's inability to remember an event does not constitute substantial evidence

supporting an unconsciousness instruction. (*People v. Heffington, supra,* 32 Cal.App.3d at p. 10.) As stated long ago in *People v. Samiengo* (1931) 118 Cal.App. 165, 173, "The inability of a defendant . . . to remember . . . is of such common occurrence and so naturally accountable for upon the normal defects of memory, or, what is more likely, the intentional denial of recollection, as to raise not even a suspicion of the declarations having been made while in an unconscious condition." Likewise, a defendant's statement that he does not remember what happened at the time of the crime is insufficient by itself to justify a finding that he was unconscious. (*People v. Coston* (1947) 82 Cal.App.2d 23, 40-41.)

Appellant argues that "[t]his was not a situation where a defendant simply asserts that his failure of recollection as to the events in question suggests a lack of mental awareness at the time of the crime." Rather, he contends, "he offered an expert's opinion that his conscious mind, having been altered by an unknown and unpredictable side effect of a medically prescribed substance known to cause precisely these effects, was not in control of his body." And in claimed support, appellant analogizes his case to *People v. Moore* (1970) 5 Cal.App.3d 486, 492 (*Moore*).

Appellant is wrong: *Moore* is distinguishable. There, defendant was convicted by a jury of second degree murder. (*Moore, supra,* 5 Cal.App.3d at p. 488.) A psychiatrist testifying on defendant's behalf opined that defendant suffered from paranoid schizophrenia, and at the time of the homicide "was acting on an impulse and was not aware of what he was doing when he shot" the victim. (*Id.* at p. 489.) In the psychiatrist's opinion, "defendant was in a schizophrenic fugue state at the time of the shooting, and what he did 'was an automatic reaction without consideration; he was acting like a person would in a dream without any thought.' " (*Id.* at pp. 489-490.) The Court of Appeal concluded that the trial court committed reversible error by failing to give an instruction on unconsciousness, noting the court's "duty to instruct the jury on all of the issues of law raised by the evidence." (*Id.* at p. 492.)

Here, there was no such expert testimony. Dr. Shipko expressed his belief that at the time appellant killed Milia he experienced a "substance-induced mood disorder of the

manic type" manifested by "hostility, aggression, and impulsivity." He never opined that appellant's behavior was "an automatic reaction without consideration," that he was "acting like a person would in a dream without any thought," or anything of that nature.

In light of this, it cannot be said that appellant's unconscious by involuntary intoxication theory was supported by substantial evidence.

IV. Disposition

The judgment of conviction is affirmed.

Richman, J.

We concur:

Kline, P.J.

Haerle, J.

AFFIDAVIT OF TRANSMITTAL

I am a citizen of the United States, over 18 years of age, and not a party to the within action; that my business address is 350 McAllister Street, San Francisco, CA 94102; that I served a copy of the attached material in envelopes addressed to those persons noted below.

That said envelopes were sealed and shipping fees fully paid thereon, and thereafter were sent as indicated via the U.S. Postal Service from San Francisco, CA 94102 or, alternatively, served via inter-office mail.

I certify under penalty of perjury that the foregoing is true and correct.

Diana Herbert, Clerk of the Court

STACY WHEELER
Deputy Clerk

JAN - 2 2009
Date

CASE NUMBER: A115311

Office of the Clerk
Solano County Superior Court - Main
600 Union Avenue, Caller Box 5000
Fairfield, CA 94533

Material Sent YES: ✓

Linda M. Murphy
Office of the Attorney General
455 Golden Gate Avenue - Suite 1100
San Francisco, CA 94102

Material Sent YES: ✓

First District Appellate Project
730 Harrison Street - Suite 201
San Francisco, CA 94107

Material Sent YES: ✓

Louisa Alice Havstad
P.O. Box 1407
Occidental, CA 95465

Material Sent YES: ____

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