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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFREDO VALLEJO,

Defendant and Appellant.

D059940

(Super. Ct. No. INF066845)

APPEAL from a judgment of the Superior Court of Riverside, Randall D. White, Judge. Affirmed, as modified, with directions.

A jury convicted Alfredo Vallejo of robbery (count 1, Pen. Code,¹ § 211), and found he had acted for the benefit of, or by direction or in association with, a criminal street gang (§186.22, subd. (b)). On the robbery count, the jury also found he acted as a principal for the benefit of a gang, in a verdict form citing section 12022.53,

¹ All further statutory references are to the Penal Code unless otherwise specified.

subdivision (e) (enhancement for use of firearm by principal or accomplice). The jury further found Vallejo guilty of carjacking (count 2, § 215, subd. (a)), and made a finding the offense was committed for the benefit of or in association with a gang. (§ 186.22, subd. (b).)

For the carjacking conviction, the court sentenced Vallejo to a term of 15 years to life under section 186.22, subdivision (b)(4)(B), while staying any alternative term under section 215. For the robbery conviction, the court sentenced Vallejo to prison for a determinate term of three years, plus a consecutive 10-year firearm gang enhancement under section 12022.53, subdivision (e). The other gang enhancement available under section 186.22, subdivision (b) was stayed pursuant to section 654.

At the hearing, additional orders were made regarding credit for time served, fines and security fees. The court orally ordered that restitution of \$1,300 be paid to the carjacking victim, and other restitution to be payable to the robbery victim, if determined later.

On appeal, Vallejo contends: (1) the trial court prejudicially erred by admitting evidence of his prior arrests to prove his association with or membership in a gang, or to prove the offenses were committed for the benefit of or in association with a gang;² (2) there was not sufficient evidence nor any sufficient jury finding to support any

² Gang enhancements pursuant to section 186.22, subdivision (b), require prosecution proof that the crimes charged were committed "for the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subd. (b)(1).) Vallejo was not charged with gang participation under section 186.22, subdivision (a).

enhancement on the ground that he was a principal in the robbery, when an accomplice or another principal personally used a firearm for the benefit of a gang (§ 12022.53, subd. (e)(1)); (3) whether or not there was some finding that it was Vallejo's accomplice or another principal who used the firearm (not Vallejo), there was still no basis to impose (but stay) a different gang enhancement on the robbery count (§ 186.22, subd. (b)(1)), since the imposition of the gang firearms enhancement based on another's personal use of a firearm is supposed to be exclusive under section 12022.53, subdivision (e)(2), and the stayed enhancement under section 186.22, subdivision (b)(1) should instead have been stricken.³ Further, Vallejo contends that on the carjacking conviction, the trial court incorrectly orally designated the 15-year-to-life term imposed for the gang-related carjacking under section 186.22, subdivision (b)(4) as an "enhancement" and then "stayed" the carjacking base term (§ 215, subds. (a), (b) [3/5/9 years]), and therefore, this court should now remand to require the trial court to employ the proper terminology of an "alternative sentencing scheme" for such term.

Vallejo also argues, and the People concede, that the abstract of judgment must be corrected to comport with the trial court's oral imposition of a \$1,300 victim restitution amount for the carjacking. Other than agreeing with the latter argument and concession regarding correction of the victim restitution amount, we find there was no prejudicial

³ Under section 12022.53, subdivision (e)(2), "[a]n enhancement for participation in a criminal street gang pursuant to [Section 186.20 et seq.] *shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision*, unless the person personally used or personally discharged a firearm in the commission of the offense." (Italics added.)

error adversely affecting the judgment of conviction or the sentence. The judgment is affirmed with directions to modify the judgment and to correct the abstract of judgment accordingly.

I

BACKGROUND OF OFFENSES

Evidence presented at trial showed that after midnight on September 19, 2009, Vallejo and a friend were pacing around the front of a Circle K store in Indio. The clerk on duty, Nicholas Sambrano, picked up the phone because he thought they might be planning to steal beer and run away ("beer run"). The men left without entering the store, then about 30 minutes later, two men came into the store with their shirts partially pulled over their heads. The first man, later identified by the clerk as Jose Ramos, jabbed a black revolver at the clerk and yelled orders in Spanish at him. Meanwhile, the other man, later identified by the clerk as Vallejo, was standing nearby acting like a lookout. Sambrano gave the men \$58 in bills and coins from the cash register.

After the two men left the store, Sambrano called police, who investigated. From a photographic lineup, Sambrano identified Vallejo and Ramos as the robbers. Surveillance cameras at the market showed that Vallejo and Ramos had walked around in front of the store and then gone in about a half hour later and robbed it.

Evidence presented at trial showed that the next day, Jorge Valdovinos was driving home in his Honda Accord from shopping in Mecca. He noticed that a dark colored Honda Civic left the same parking lot and followed him for a few miles. When

Valdovinos turned and stopped at a stop sign, he realized that the dark colored car had accelerated around him and was pulling in front of his car to block it. Four men were inside, and one of them got out and pointed a gun at Valdovinos, demanding money. Valdovinos gave him \$600, and after being hit with the gun, gave up his car keys. Someone else got into his car and the two cars left.

Valdovinos called relatives and the police to the site, and they were discussing the matter when the dark colored Honda Civic drove back and pulled over. Three men got out and ran away, and the police could not catch them.

Vallejo was arrested in connection with the robbery and carjacking, and spoke to a Riverside County Sheriff's investigator, Ismael Celaya, after receiving advisement about his *Miranda*⁴ rights. Other suspects were arrested, including Ramos, Vallejo's brother Eric, and his cousin Eddie Centeno. Vallejo told Celaya that he was a former member of a gang whose turf was in the city of Mecca, Varrio Mecca Rifa (VMR). Vallejo said that his brother Eric was a current member of VMR, called Lil Cholo. Ramos (called Scarhead) and Vallejo's cousin Centeno (called Duende) were also current members.

After being questioned a while, Vallejo identified himself, Ramos, and his cousin Centeno as the men photographed by the market's surveillance camera. He explained that the men had been visiting in an apartment with their homies (gang associates) when Ramos suggested that he, Vallejo, and Centeno go steal some beer. Ramos took them to the market and stayed in the car, while the other two walked around, but they did not take

⁴ *Miranda v. Arizona* (1966) 384 U.S. 436.

anything. Ramos called them names (pussies) and said to come along to steal money. Vallejo offered to buy beer, but Ramos showed Vallejo his gun and covered his face, entering the store, and after a momentary hesitation, Vallejo followed him in. They got \$58 from the robbery.

Vallejo then told the investigating officer that Ramos had stolen a black Honda recently, and the next day, asked Vallejo to drive him somewhere in it. When they saw the Honda Accord, Ramos told Vallejo to stop. Ramos covered his face and got out of the car, holding a gun, and Vallejo then realized he had carjacking on his mind. Vallejo got \$130 from the money taken from the carjacking victim.

Vallejo's bedroom, shared with his brother Eric, was searched and clothing that matched the robbery victim's description of a robber was found, as well as a belt buckle with the letter "M." Investigators also found handwritten graffiti referring to gang symbols (the letter M, VRM and number symbols).

II

EVIDENTIARY ISSUES: ADMISSION OF PRIOR ARRESTS

Vallejo contends that since he admitted to investigators that he was a past member of VMR, and since other compelling evidence about his gang connections was brought in at trial, the inflammatory effect of admitting evidence of his three prior gang-related arrests was unduly serious and warrants reversal of the convictions. (Evid. Code, § 352.)

Respondent concedes it was error to admit evidence of prior arrests, but argues the error was harmless. We agree.

A. Evidence and Purpose

At trial, Riverside County Sheriff's Deputy Edward Ortega testified as an expert on gangs, explaining that VMR is a criminal street gang located in Mecca, with about 40 members, some of whom have been identified on police rosters and cards. Its primary criminal activities are vehicle thefts and assaults, and he described a few such offenses and the members who had committed them. Deputy Ortega generally explained the process by which an individual commits crimes to gain respect to be allowed to join a gang and to further its purposes, and he specifically testified about his contacts with recognized gang members or associates, including Vallejo and Ramos. Vallejo has used the gang name Cholo (gangster), and this name has been found in graffiti in Mecca along with names used by Ramos (Scarhead), Centeno (Duende), and Eric Vallejo (Lil Cholo). Deputy Celaya testified that Vallejo said he was a former gang member, and stated he was at a VMR party the night of the robbery.

As the prosecution's gang expert, Ortega testified that Vallejo had been arrested three times along with known members of the VMR gang. In 2005, he was arrested for battery on a school employee, and in November 2007, for drug possession. In February 2008, Vallejo was with gang members who were contacted by Deputy Ortega.

At trial, Vallejo objected to the admission of evidence of those three earlier arrests as unduly prejudicial. The court admitted the statement because it was relevant to show the basis of the expert's opinion that Vallejo had gang ties, but told the prosecutor to keep it simple. When Deputy Ortega next mentioned that Vallejo had probation record

contacts identifying him as a VMR gang member, the court sustained a further objection and struck that testimony.

Deputy Ortega responded yes to hypothetical questions about whether a similar "beer run" and robbery offense, or carjacking, would apparently be for the benefit of or in association with gang members. He believed that offenders who associated together to pursue such acts as these would do so to promote their reputations within and outside of the gang, and splitting up stolen money would benefit the gang. Ortega admitted that it was possible that a robbery might not have been for the benefit of the gang if the profits were not shared or if not everyone got to use a stolen car, although the gang's reputation might still benefit.

Later, the trial court instructed the jury that the People did not have to prove Vallejo was an active or current gang member, in order to make true findings on the gang enhancements or the charged offenses. However, the jury was asked to determine whether the offenses were committed for the benefit of a gang. (§ 186.22, subd. (b)(1).)

B. Applicable Standards; Evaluation of Prejudice

The court has broad discretion in determining whether the "probative value [of the evidence] is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) We review the court's evidentiary ruling for abuse of discretion. (*People v. Whisenhunt* (2008) 44 Cal.4th 174, 203.) When discretion is vested in the trial court, the exercise of

that discretion "must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316, original italics.)

In *People v. Leon* (2008) 161 Cal.App.4th 149, 169, and in *People v. Williams* (2009) 170 Cal.App.4th 587, 610-611, divisions of this court analyzed the prejudicial effect of evidence of a defendant's former crimes or arrests, and concluded that such evidence may not be used to prove active membership in a gang, where the evidence of the defendant's gang membership is uncontested or otherwise overwhelming. Such evidence is properly subject to exclusion under Evidence Code section 352 because of its inflammatory nature and because it is "merely cumulative" on an issue not reasonably subject to dispute.

Under these standards, the People concede that it was error for the trial court to allow in evidence of the past arrests to prove Vallejo was associated with a gang. However, the issue remains whether the error was harmful. (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).

C. Analysis

On appeal, Vallejo frames his argument in terms of the defense he presented, that he no longer belonged to VMR, and he claims this defense and the remainder of the evidence could not be fairly evaluated when the arrests evidence was added. Vallejo objected to the admissibility of the arrest evidence, but the court allowed it for showing a

further basis for the gang expert's opinion. At the time, several subjects of expert opinion were being offered, not only about gang association indicators, but also about whether the offenses were committed for the benefit of a gang. Vallejo did not dispute that he participated in these crimes with known gang members, including Ramos, his brother, and his cousin. The jury was instructed that gang membership was not a prerequisite for conviction, and the prosecutor argued that association with gang members during the commission of the offenses, for the stated purposes, was sufficient to support the gang enhancements.

Even without the prior arrests information, there was direct, overwhelming evidence connecting Vallejo to participation in these crimes as an individual, and demonstrating that the crimes were committed in a way designed to benefit the gang. Vallejo was seen on the market's surveillance records and was identified by the robbery victim in the photographic lineup, as was Ramos. Vallejo admitted to the robbery and that he knew Ramos had a gun at the market, and conceded the same in argument. Although Vallejo denied that he was a VMR gang member, he explained that he went along with Ramos's robbery plan, after Ramos ridiculed him for not stealing beer and showed him the gun. This evidence is substantial and supports the jury's finding that Vallejo acted for the benefit of, or in association with, VMR.

Vallejo also told investigators about his participation and driving in the carjacking, and the victim described the events in the same basic way. There was evidence Vallejo participated in the actions leading up to both offenses, knew Ramos and other participants

were gang members, and acted to assist them. This was enough to show he committed the offenses in association with and to benefit the gang. (§ 186.22, subd. (b)(1).)

Even though the testimony about three prior arrests of Vallejo in the company of gang members should have been excluded as unnecessary propensity evidence, we disagree that any prejudicial error occurred. On this record, it is most unlikely that the evidence of three prior arrests between 2005 and 2008 (for lesser offenses) unduly tipped the scales toward a guilty finding on the offenses or the gang benefit. Compared to the other evidence, the prior arrests evidence was not "extremely inflammatory" in nature. Although the trial court should not have admitted such evidence, we conclude it was not reasonably probable that Vallejo would have obtained a more favorable result absent the admission of the testimony. (*Watson, supra*, 46 Cal.2d at p. 836.)

III

GANG ENHANCEMENT ISSUES: ROBBERY

Vallejo contends the evidence and verdict forms were insufficient to support any jury findings that in the course of the robbery, (a) an accomplice or another principal used a firearm, (b) Vallejo was a principal in the offense, and (c) he should therefore be subject to a firearm enhancement. He argues the 10-year enhancement imposed under section 12022.53, subdivisions (b) and (e)(1) must be stricken.⁵

⁵ Section 12022.53, subdivision (e) provides in relevant part: "(1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved: [¶] (A) The person violated subdivision (b) of Section 186.22. [¶] (B) *Any principal in the offense*

A. Applicable Standards; Evaluation of Prejudice

When an appellant challenges the sufficiency of the evidence, we "must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) In making this determination, we view all conflicts in the evidence in the light most favorable to the prevailing party, recognizing that issues of fact or credibility are for the trier of fact. (*People v. Johnson* (1980) 26 Cal.3d 557, 562.) We indulge all reasonable inferences to uphold the judgment, and if there is substantial evidence supporting the judgment, it must not be disturbed. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1139.)

"Section 12022.53, subdivision (e)(1) increases the scope of potential liability for firearm use in a case where there is a finding pursuant to section 186.22. [Citation.] Section 12022.53, subdivision (e)(1) extends potential liability under the firearm enhancement when the accused, in a gang case, does not personally use the weapon." (*People v. Salas* (2001) 89 Cal.App.4th 1275, 1281; *People v. Gonzales* (2001) 87 Cal.App.4th 1, 14-15.)

committed any act specified in subdivision (b), (c), or (d) [e.g., personal firearm use]. [¶]
(2) An enhancement for participation in a criminal street gang pursuant to [§ 186.20 et seq.] *shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.*" (Italics added.)

B. Evidence, Instructions and Verdict Forms

In evaluating this record, it must be acknowledged that although the firearms enhancement for robbery was pled, argued and instructed upon, the record indicates there were two duplicate verdict forms on one subsidiary issue, i.e., whether Vallejo acted as a principal and in association with the gang to promote gang interests. This duplicate verdict form refers to section 12022.53, subdivision (e), but the jury was apparently not given a form on which to expressly indicate whether an accomplice in the robbery, Ramos, had personally used a firearm, also under section 12022.53, subdivision (e). There is no contention that this verdict form defect was anything other than clerical error. Since the argument is presented in terms of insufficiency of the evidence, we evaluate the record under that standard.

As already indicated, Vallejo was seen on the market's surveillance records and was identified by the robbery victim in the photographic lineup, as was the gunman Ramos. Vallejo admitted to the robbery and that he knew Ramos had a gun at the market and pointed it at the clerk, who gave them money.

The jury received instructions about how to evaluate whether the robbery had been committed for the benefit of or in association with a gang, to promote any criminal conduct by gang members. (CALCRIM No. 1402.) According to this instruction, "the People must prove that: [¶] Someone who was a principal in the crime personally used a firearm during its commission." CALCRIM No. 1402 also defined the term "principal" in a crime, as someone who directly commits the crime or aids and abets someone else to

commit the crime. A firearm was also defined, and personal use of a firearm included "displaying the firearm in a menacing manner." Next, the jury was told, "the People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved." (CALCRIM No. 1402.)

In argument, the prosecutor referred to the evidence about Ramos's use of a gun to threaten the clerk at the robbery, and characterized Vallejo as acting as a lookout at the time. Defense counsel did not dispute that the robbery occurred or that the clerk was threatened with a gun while Vallejo was present, but claimed that Vallejo made a bad decision and just went along.

After deliberations, the jury found the gang allegation true under section 186.22, and their verdicts also stated that Vallejo had acted as a principal in the offense and intended to assist in criminal conduct by other gang members, within the meaning of section 12022.53, subdivision (e). The latter finding was duplicated, but any specific firearm finding was missing.

On the entire record, there is sufficient evidence to show Vallejo's actions were taken to benefit or in association with gang members, including the use of a firearm by his associate. Vallejo did not dispute that he decided to go along with Ramos's robbery plan, including the gun use when Ramos pointed it at the market's clerk, backed up by Vallejo. Likewise, there is no dispute that Ramos personally used a firearm during the robbery. Ramos was recognized as a VMR gang member by both law enforcement

personnel and the community, including Vallejo, but Ramos did not act alone. Vallejo's intent to benefit his gang associates in this instance was reasonably inferable and proven from his "[c]ommission of a crime in concert with known gang members." (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322.) The proven and admitted manner of commission of the robbery sufficiently supports the imposition of this firearm enhancement. Any error in the verdict form is harmless beyond a reasonable doubt.

C. Stay or Strike?

Vallejo alternatively argued that the trial court should have stricken the gang enhancement for robbery under section 186.22, subdivision (b), instead of staying it under section 654. He relies on language in section 12022.53, subdivision (e)(2), that a section 186.22 gang enhancement "*shall not be imposed* on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense." (Italics added.) He interprets "shall not be imposed" as requiring a strike order under these circumstances, not merely a stay, and claims the stay was unauthorized.

We have already discussed above how the firearm enhancement for robbery is supported by the evidence, even in light of an apparently omitted verdict form about which participant used the firearm. Vallejo nevertheless argues that the alternative version of the gang enhancement, under section 186.22, was erroneously "imposed" (but

stayed) within the meaning of section 12022.53, subdivision (e)(2).⁶ However, that argument is undercut by California Rules of Court, rule 4.447 (all further rule references are to the Cal. Rules of Court). This rule provides, "No finding of an enhancement may be stricken or dismissed because imposition of the term either is prohibited by law or exceeds limitations on the imposition of multiple enhancements. The sentencing judge must impose sentence for the aggregate term of imprisonment computed without reference to those prohibitions and limitations, *and must thereupon stay execution of so much of the term as is prohibited or exceeds the applicable limit.* The stay will become permanent on the defendant's service of the portion of the sentence not stayed." (Italics added.) Some of the illustrations given by the rules' advisory committee comment, for how a statutory restriction may limit the imposition of an enhancement and how to handle it, are these very sections (§§ 186.22, subd. (b)(1), 12022.53, subd. (e)(2)).

It is well settled that this procedure for stay of a sentence enhancement is based on the concept that a defendant who is subject to one of two alternative punishments must not be wrongly subjected to both. Because of the use of such a stay, if one of the two punishments is invalidated, the defendant remains subject to the other one. (*People v. Lopez* (2004) 119 Cal.App.4th 355, 365; *People v. Niles* (1964) 227 Cal.App.2d 749, 755-756; *People v. Vergara* (1991) 230 Cal.App.3d 1564, 1569.) As explained in *People v. Gonzalez* (2008) 43 Cal.4th 1118, when only one of multiple enhancements could be

⁶ The sentencing minute order shows that the enhancement under section 186.22 was for 10 years as a violent felony, but stayed under section 654.

"imposed" under the statutory scheme, the meaning of the word "impose" is a term of art: "[I]t is important to understand that the word 'impose' applies to enhancements that are 'imposed and then *executed*' as well as those that are 'imposed and then *stayed*'. However, as a practical matter, the word "impose" is often employed as shorthand to refer to the first situation, while the word "stay" often refers to the latter.' " (*Id.* at p. 1125.)

As discussed above, we have found sufficient evidentiary support in the record for the judgment of conviction of armed robbery for gang purposes, including a firearm sentence enhancement under section 12022.53, subdivision (e). The trial court correctly found that even though punishment for the gang enhancement under section 186.22 could be "imposed," that term must be stayed in light of the other, primary firearms enhancement. Striking it was not required or appropriate.

IV

GANG ENHANCEMENT ISSUES: CARJACKING

Vallejo next contends the trial court erred in sentencing him on the carjacking offense, by choosing a term of 15 years to life under section 186.22, subdivision (b)(4), and then (incorrectly) calling it an "enhancement." The court also stated, "The count pursuant to section 215, subdivision (a) of the Penal Code [carjacking] will be stayed," but no term of years was mentioned. Vallejo is justified in criticizing the trial court's language in referring to the chosen term of 15 years to life. It is not an "enhancement," but rather, represents an alternate sentencing scheme. The questions to be asked are whether there is any harm or any need for a remedy.

In *People v. Jones* (2009) 47 Cal.4th 566, 576, the Supreme Court explained the difference between (1) an enhancement, which provides for an additional term of imprisonment, and (2) a penalty provision, which " 'sets forth an alternate penalty for the underlying felony itself, when the jury has determined that the defendant has satisfied the conditions specified in the statute.' (*People v. Jefferson* (1999) 21 Cal.4th 86, 101.)"

In order to prove the gang enhancement for carjacking under section 186.22, subdivision (b)(4), the prosecution was required to show Vallejo committed the crime for the benefit of, or in association with, VMR, and had the specific intent to assist or further criminal conduct by VMR members. Vallejo was driving the car that followed the victim, then he accelerated around him and blocked him, allowing his companion to get out, point a gun, demand money and car keys, hit the victim with the gun, and take his car.

Accordingly, since the evidence supported conviction of Vallejo for carjacking as a gang crime, under the language of section 186.22, subdivision (b)(4), the court had to select as a sentence an indeterminate term of life imprisonment, and to set the minimum term at the greater amount available. Section 186.22, subdivision (b)(4)(B) sets a term of imprisonment in the state prison for 15 years, where "the felony is . . . ; carjacking, as defined in Section 215" Therefore, this statute required that the chosen minimum term under these circumstances was 15 years for carjacking (as "the greater of" the two choices, compared to lesser year terms allowable under § 215, subd. (b)).

Regardless of the oral statements by the sentencing court, Vallejo cannot interpret his sentence under section 186.22, subdivision (b)(4) as an incorrectly imposed enhancement, when as a matter of law, it is actually a properly imposed alternate penalty provision. There is no basis in the record or the sentencing statutes for selecting a lesser term for carjacking under section 215, but there was also no harm in generally staying it. The policy of rule 4.447 is protected, that a defendant who is subject to one of two alternative punishments must not be wrongly subjected to both. The correct term was chosen, as an alternate sentence provision. There was no reversible error.

V

THE ABSTRACT OF JUDGMENT MUST BE MODIFIED TO CORRESPOND WITH THE TRIAL COURT'S ORAL PRONOUNCEMENT OF JUDGMENT

Vallejo points out, and the People concede, that the abstract of judgment does not correspond with the trial court's oral rendition of judgment, with respect to the victim restitution amount. In the abstract of judgment, \$1,300 was awarded to the individual robbery victim (Sambrano) and \$500 to the market (Circle K). As to the carjacking victim, Valdovinos, an award of \$800 was recorded.

However, in orally pronouncing judgment, the trial court did not make any award to the robbery victims, but ordered that the carjacking victim would receive his cash and his \$500 deductible, with that total stated to be \$1,300.

"It is, of course, important that courts correct errors and omissions in abstracts of judgment. An abstract of judgment is not the judgment of conviction; it does not control

if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize." (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) As a result, the trial court must modify the judgment and amend the abstract of judgment to reflect the \$1,300 victim restitution amount ordered to Valdovinos.

DISPOSITION

The judgment of conviction and sentence is affirmed with directions to the trial court, to modify the judgment and to prepare an amended abstract of judgment reflecting the correct victim restitution amount of \$1,300 to Valdovinos, while deleting the awards as to Sambrano and Circle K. The court shall forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.