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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS MILLER et al.,

Defendants and Appellants.

E053554

(Super.Ct.No. RIF10004991)

OPINION

APPEAL from the Superior Court of Riverside County. Christian F. Thierbach, Judge. Affirmed with directions.

Mark L. Christiansen, under appointment by the Court of Appeal, for Defendant and Appellant Thomas Miller.

Sharon M. Jones, under appointment by the Court of Appeal, for Defendant and Appellant Charles Anthony Williams.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Susan Miller, and Anthony Da Silva, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendants Thomas Miller and Charles Williams (defendants) committed a carjacking in Los Angeles County, and then used the stolen car to commit another carjacking six days later, in Riverside County. During the second carjacking, defendants kidnapped the victim and demanded he drive Williams to a nearby bank, withdraw money from an ATM machine, and give the money to defendants.

Defendants appeal from judgment entered following jury convictions for carjacking (Pen. Code, § 215, subd. (a)¹; counts 1 and 2), aggravated kidnapping to commit robbery (§ 209, subd. (b)(1); count 3), and robbery (§ 211; count 4). The jury also found true the special allegation on count 1 that the victim was at least 65 years old (§ 667.9, subd. (a)) and Williams personally used a knife (§ 12022, subd. (b)(1)). Miller was sentenced to life in prison with the possibility of parole and a consecutive determinate sentence of 11 years eight months in prison. Williams was also sentenced to life in prison with the possibility of parole and a consecutive determinate term of 12 years eight months in prison. The trial court imposed various fines, which the court found defendants did not have the financial ability to pay.

Defendants were tried together but had separate juries. Defendants filed separate appeals, which this court has ordered consolidated. Defendants join in each other's arguments raised on appeal. (Cal. Rules of Court, rule 8.200(a)(5).)

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

Miller contends the trial court did not have jurisdiction as to count 1 because the vicinage of the offense was not in Riverside County. Miller also asserts there was insufficient evidence to support a conviction on count 3; the trial court erred in modifying CALCRIM No. 1203; sentencing on count 2 must be stayed under section 654; and the section 1202.5 fine of \$40 must be reduced to \$10. Williams further argues that his constitutional rights to a trial by jury and equal protection were violated by the trial court denying his *Wheeler*² motion challenging the removal of three African-American jurors. Williams also asserts that the fees and fines for \$120 (Gov. Code, § 70373), \$160 (§ 1465.8), and \$40 (§ 1202.5) should be stricken from the abstract of judgment because the trial court found that Williams did not have the ability to pay them.

The People agree the \$40 fine should be reduced to \$10, and this court accordingly orders the judgment modified to impose a \$10 fine against each defendant under section 1202.5, subdivision (a), with the \$40 fine stricken. In all other respects, we conclude there was no prejudicial error and affirm the judgment for the reasons stated below.

II

FACTS

First Carjacking (Count 1)

On June 9, 2010, Howard McDonald, who was 83 years old, drove his red Honda Civic to a Carl's Jr. restaurant in Culver City. After McDonald left the restaurant at approximately 3:00 p.m. and walked to his car, defendants approached McDonald. They

² *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

asked McDonald for money to buy food. As McDonald reached into his pocket for money, Williams pulled out a knife, pressed the knife against McDonald's stomach, and said, "While you're doing it, give me the keys to your car." McDonald gave Williams his car keys. Williams handed the keys to Miller and told him to drive the Honda. Miller drove off in the Honda, with Williams in the passenger seat. Defendants, who were cousins, remained in Los Angeles County for a few days. On June 11, 2009, they drove the Honda to Moreno Valley, in Riverside County.

Second Carjacking and Related Crimes (Counts 2, 3, and 4)

On June 15, 2010, around 9:00 a.m., Vernon Jones drove to a shopping center in Moreno Valley to meet a friend.³ Before arriving, Jones noticed a red Honda Civic following his car. Jones was driving a teal green Chevy Camaro, with large rims, a sound system and a television. As the Honda passed Jones in the opposite direction, he saw three men looking at him. Jones later identified them as Miller, Williams, and their cousin, Kevin Frison.⁴ The Honda made a U-turn and followed Jones into the mall parking lot. The two cars separated but, when Jones drove to another lot across the street, the Honda blocked his only exit. Jones remained in his car with the window down.

³ During the trial, the prosecutor indicated the incident occurred on June 15, 2010, and several witnesses did not deny this fact. Other evidence and the pleadings, however, state the carjacking occurred on June 14, 2010, including the amended information, Williams's recorded police interview on June 14, 2010, Miller's recorded statement on June 15, 2010, the prosecution's trial brief, testimony during the preliminary hearing, and testimony by a forensic technician for the Riverside County Sheriff's Department.

⁴ Frison is not a party to this appeal. He pled guilty to the second carjacking, kidnapping, and robbery charges.

Frison, the front passenger in the Honda, asked Jones what gang he was with. Jones replied he was not affiliated with any gang. The rear passenger, Williams, got out of the Honda and walked up to Jones. He had a semi-automatic gun at his side. Miller told Williams to “[s]hoot, Blood,” which Jones believed meant defendants were gang members and Miller wanted Williams to shoot Jones. Miller also told Williams to “[t]ake Blood’s car.” Williams pointed a gun at Jones after ordering him out of the car. While pointing his gun at Jones, Williams ordered Jones to take everything out of his pockets and give him his belongings. Jones handed Williams his cell phone and wallet, which contained credit cards, a driver’s license, and cash.

Williams told Frison to take Jones’s car. Frison got out of the Honda and sat in the driver’s seat of the Camaro. Williams sat in the front passenger seat. As Jones walked away, he heard his car’s engine making sounds indicating Frison could not operate the manual transmission. Frison and Williams called Jones back and asked him to show them how to drive Jones’s car. Miller drove the Honda over to Jones and told him not to call the police because defendants had his driver’s license and knew where he lived. As Jones returned to the Camaro, Miller backed up the Honda over to the Camaro and told Frison and Williams to leave the Camaro. Frison returned to the Honda but Williams remained in the front passenger seat.

Jones got into the driver’s seat of his car. He was afraid because Williams sat in the front seat of the Camaro with a gun in his lap. Williams told Jones, “Take us to the bank over here.” Jones drove to the ATM across the street, with the Honda following behind. Williams told Jones “times were hard” and he “had to get” the money.

Jones parked in front of the bank. The Honda parked nearby. Jones and Williams exited the Camaro, and Miller and Frison got out of the Honda. They all walked up to the ATM. Williams's gun was on his waistband, tucked under his shirt. Jones withdrew \$300 from the ATM, his daily limit, and gave the money to defendants. Miller unsuccessfully attempted to withdraw more money with Jones's ATM card. When asked, Jones told defendants where they could use his credit cards. Defendants and Frison then drove away in the Honda. Jones called the police.

That same day, around 11:00 a.m., Los Angeles County Sheriff Deputy Ernesto Moran received a call that a crime had occurred in Moreno Valley and the suspects, three African-American men, were at the Puente Hills mall, in the City of Industry. The suspects were located at the mall by means of a cellular phone company tracking Jones's cell phone. Mall security officers found McDonald's red Honda parked in the mall parking lot. Moran heard over the radio that the Honda had been located. Moran saw the Honda with three African-American men in the car. Moran made a U-turn and followed the Honda as it drove out of the parking lot, towards the 60 Freeway. Moran activated his patrol car lights as he followed in pursuit of the Honda on the 60 Freeway.

As the Honda cut across the freeway towards an exit, the Honda hit a sign, curb, and guard rail, flipped over, and slid to a stop on its hood. Moran exited his patrol car at the scene and saw Miller, the driver, and Williams, the rear passenger, run from the Honda. Frison, remained in the front passenger seat, restrained by the seatbelt. After apprehending defendants, Moran searched defendants and retrieved Jones's wallet, cell

phone, credit cards, and change from Miller's pants pocket. Moran found a pellet gun in the Honda glove compartment.

A forensic technician for the Riverside County Sheriff's Department lifted fingerprints from the Camaro and pellet gun. A fingerprint examiner at the Riverside County Sheriff's Department, Cal-I.D. unit examined prints lifted from the Camaro and pellet gun. She determined the prints from the car belonged to Williams.

On June 14, 2010, Williams admitted during a recorded police interview that he participated in both carjackings and the robbery of Jones. He also admitted he was armed with a knife during the McDonald carjacking and with a pellet gun during the crimes against Jones.

On June 15, 2010, Miller admitted during his recorded police interview that he knew about the carjacking in Culver City. Miller said that Williams and his friend, Dontrelle, took the car from an elderly man and then picked up Miller in the stolen car. Williams let Miller drive the car until June 14, 2010. Miller knew the car was stolen. Later in his interview, Miller admitted he was present during the McDonald carjacking at a Carl's Jr. restaurant. The victim was old. Williams walked up to the man, told him to give Williams his car keys. Miller drove the stolen car from the scene. Defendants stole the car because they did not want to walk. Miller also admitted he was present when Williams committed the carjacking on June 14, 2010, and followed Jones to the bank because Jones offered defendants money for not taking his car.

III

WHEELER MOTION

Williams contends he was deprived of his constitutional rights to equal protection and to trial by a jury drawn from a representative cross-section of the community. He asserts these rights were violated when the trial court found there was no systematic exclusion of African-Americans from the jury panel and denied his *Wheeler* motion.

A. *Jury Voir Dire*

After the prosecutor used five peremptory challenges and removed three African-American prospective jurors, defense counsel made a *Wheeler* motion on the ground the prosecution had removed three prospective jurors based on their race. The three prospective African-American jurors were M., W., and H. Williams's attorney noted that there was only one African-American remaining on the panel, and defendants were both African-American.

(1) **Juror M.**

During voir dire, M. stated she was a "retired public defender for the Los Angeles County." But M. was not an attorney. She said she had previously worked as a paralegal for the Los Angeles Public Defender for two years. She also worked for the Los Angeles District Attorney. Before that, she studied journalism and was a recording artist. M. lived in Los Angeles County for two years. She said that since she moved to Riverside, "I stay near the Riverside College." She added that her children were all adults and she had "grandchildren that I'm trying to encourage to stay into the field. I just want them to

learn and teach them. [¶] . . . [¶] . . . Basically that's all we study, English and more English.”

M. said that when she worked for the Los Angeles Public Defender, she handled a couple of cases. She was studying to be a paralegal and was a “study employee.” She did not actually work for the public defender's office. When asked what she did there, M. said she “actually handled a couple of court cases.” She switched from the Los Angeles Public Defender to the Los Angeles District Attorney office because of “[m]ostly peer pressure.” She felt more comfortable working with the district attorney than the public defender.

M. said she had previously served on a jury in a criminal case and found the experience interesting. She acknowledged she had been assaulted in the 1970's. When Williams's attorney noted M. was soft-spoken, M. explained: “I have learned to control my voice, so I just try to be as quiet as I can.” Counsel asked M. if she would be able to be heard if she deliberated with 11 other jurors with that soft voice. M. responded: “I wouldn't use the same soft voice. I have had speech classes, and I've had quite a bit of experience with tone.” She said she could handle other jurors raising their voices in heated deliberations.

Out of the presence of the prospective jurors, the prosecutor made a challenge for cause as to M., explaining: “I'm concerned about Ms. [M.]. I think that either she is a little delusional or she is blatantly lying. I'm not sure what it is about the Public Defender's Office and about her background, and I'm very concerned about her

mentally.” The court denied the challenge for cause, noting that in Los Angeles County, paralegals used to be able to handle simple misdemeanor cases.

(2) Juror W.

W. stated she was a retired peace officer. Her most recent job was with the California Department of Corrections. She travelled from institution to institution, staying one week at each institution, reviewing files to determine whether inmates should be transferred to a different institution based on their mental health, educational, security, and custody needs. She noticed that there were many more “Black” inmates with three strikes than “Whites or Hispanics.” Blacks with three strike sentences were “just prevalent, just ridiculously prevalent that they got that third strike versus other races.” She said that Black inmates would have a brief criminal history, with not very many crimes, and be sentenced to prison, whereas White inmates had many convictions and were sentenced to county jail, instead of prison.

When asked if W. would want a Black defendant to receive preferential treatment, W. said she did not want to give anyone preferential treatment. She would do her job the way she was supposed to as an American citizen and would not give a Black defendant preferential treatment. If she believed the defendant was guilty beyond a reasonable doubt, she would find him guilty. When asked if W. would hold the prosecution to a different standard than required by the law, because of what she knew, W. responded: “You know what, I’m going to be totally honest with you. I don’t have a lot of trust in nobody. Nobody. America, nobody, period. We got all these bank executives walking around here not getting prosecuted for the fraud they commit with the mortgage industry.

They just walking free, and then they are getting TARP money, they take vacations, trips and – you know, I don't have no trust in nobody.”

Out of the presence of the prospective jurors, the prosecutor made a challenge for cause as to W., explaining that W. said she did not trust anyone, she did not trust the system, and she would hold the prosecutor to a different standard. The court responded that W. did not say she would hold her to a different standard but “she did throw up her hands and say she didn't trust anybody.” Nevertheless the court denied the prosecution's challenge because W. stated that if there was evidence, she would convict.

(3) Juror H.

During voir dire, H. stated that he was currently a social worker for the City of Riverside, Child Protective Services (CPS). H. worked in the court detention unit where children are placed in protective custody. He made recommendations to the court on whether to reunify families with their children. H. said he agreed with another prospective juror “[t]hat African Americans have more of a – . . . historically, have gotten the short end of the stick in the criminal justice system.” Nevertheless, he did not believe a defendant should get preferential treatment because of this. H. explained that, “working in CPS and making my recommendations to the Court, there may have been times where I felt like the allegations were – I might have had a different take on it based on my investigation, but still I have to follow the protocol of the department and the Court, so I understand there is a game to be played.”

During voir dire, the prosecutor stated the hypothetical of Charlie Sheen running into the courtroom and stealing a computer from the court reporter in front of everyone in

the courtroom. The prosecutor asked the prospective jurors if they would think that if the case went to trial, there must be something wrong with the theft case because it was being tried. Otherwise why would it be tried? The prosecutor noted that even though there was overwhelming evidence that Charlie Sheen had hypothetically stolen the computer, he had a constitutional right to a trial. H. responded that “the main point of the legal system or major point is due process, so that’s one thing I want to make sure everybody has due process.”

(4) The Trial Court’s Rationale for Denying Williams’s *Wheeler* Motion

The trial court denied William’s *Wheeler* motion on the ground Williams had not established a prima facie case of group bias. The trial court explained that M. “was all over the place with respect to her responses. She struck me as someone who was trying to avoid jury service or trying to be excused. Her answers were sometimes incoherent and I see nothing at all racially motivated about excusing her.”

With regard to W., the court explained that, before denying the prosecution’s peremptory challenge, the court denied the prosecution’s challenge for cause because W. “said she could, under appropriate circumstances, return a verdict of guilty, yet her last comment during the questioning of her was ‘I don’t trust anybody.’ She doesn’t trust the system. She has traveled the state of California looking at inmates from CYA’s rap sheets, and in her opinion determined that a far higher percentage of [B]lacks were sentenced for three strikes cases as compared to [W]hites and Hispanics. [¶] I happen to know that’s not accurate. Blacks and Hispanics do make up, combined, a greater percentage of state prison inmates than [W]hites, but her entire attitude was one of – for

one who professed to be a peace officer, . . . but her responses kind of surprised me in that she was clearly antiestablishment and gave every indication she felt sympathy for the defendant because of racial issues.”

As to H., the court noted that H. was a social worker, “and in my experience as a judge and as a trial lawyer, I found that probably 95 percent of social workers would be excused via preemptory challenge . . . and the reason for that is that they tend to sympathize with the underdog.” The court acknowledged there was nothing specific H. said to indicate this, but he indicated he did ““think there is unfairness based upon the message of racial connotations’ He thought that there was an abundance of African Americans who tend to be convicted more than other races, particularly [W]hite, but his background as a social worker – and that one statement lead me to believe that there was nothing racially motivated in terms of excusing him.”

The prosecutor stated she intended to keep the African-American juror already on the jury panel, and the court’s reasons for denying the *Wheeler* motion were the same reasons the prosecution had for excusing the three jurors.

B. Applicable Law

“Both the state and federal Constitutions prohibit the use of preemptory challenges to remove prospective jurors based solely on group bias.” (*People v. Thompson* (2010) 49 Cal.4th 79, 107 (*Thompson*), citing *Batson v. Kentucky* (1986) 476 U.S. 79, 89; *Wheeler, supra*, 22 Cal.3d at pp. 276-277.) “[T]he unconstitutional exclusion of even a single juror on improper grounds of racial or group bias requires . . . reversal of the judgment [Citations.]” (*People v. Reynoso* (2003) 31 Cal.4th 903, 927, fn. 8.)

“[A]n objection on the basis of *Wheeler* also preserves claims that may be made under *Batson*. [Citations.]” (*People v. Salcido* (2008) 44 Cal.4th 93, 136, fn. 7; accord, *People v. Yeoman* (2003) 31 Cal.4th 93, 117-118.)

When making a challenge under *Batson* and *Wheeler*, “First, the defendant must make out a prima facie case “by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose.” [Citation.] Second, once the defendant has made out a prima facie case, the “burden shifts to the State to explain adequately the racial exclusion” by offering permissible race-neutral justifications for the strikes. [Citations.] Third, “[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination.” [Citation.]” (*Thompson, supra*, 49 Cal.4th at p. 107; see also *People v. Garcia* (2011) 52 Cal.4th 706, 747 (*Garcia*).

At issue here are the requirements for establishing a prima facie case of race bias in the use of peremptory challenges. “In this first stage of any *Wheeler/Batson* inquiry, the defendant must show that “the totality of the relevant facts gives rise to an inference of discriminatory purpose.” [Citations.] To clarify, this is not a case in which, after a prima facie violation is found, the prosecution must offer permissible nondiscriminatory reasons for the strikes (i.e., the second stage of a *Wheeler/Batson* challenge). Nor must the trial court decide whether the defendant has carried his burden of showing the discriminatory use of such strikes (i.e., the third *Wheeler/Batson* stage). [Citation.]” (*Garcia, supra*, 52 Cal.4th at p. 746.) Rather, “the prosecutor was not required to

disclose reasons for the excusals, and the court was not required to evaluate them, until a prima facie case was made. [Citations.]” (*Ibid.*)

“[W]e independently decide whether the record permits an inference that the prosecutor excused jurors on prohibited discriminatory grounds. [Citations.]” (*Garcia, supra*, 52 Cal.4th at p. 747.) In conducting this independent review and determining whether such an impermissible inference exists, we are to consider the entire record created on voir dire. (*Id.* at p. 747.) “‘Review of a trial court’s denial of a *Wheeler/Batson* motion is deferential, examining only whether substantial evidence supports its conclusions.’ [Citation.] ‘We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court’s ability to distinguish bona fide reasons from sham excuses.’ [Citation.] As long as the court makes ‘a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.’ [Citation.]” (*Thompson, supra*, 49 Cal.4th at p. 107.)

C. Discussion

Williams asserts that the trial court erred in finding he had not established a prima facie case of race discrimination and therefore committed reversible error in not requiring the prosecution to provide a race-neutral explanation for removing the African-American jurors. We conclude the trial court aptly and articulately explained why Williams had not established a prima facie case. The fact that M., W., and H. were African-Americans, and three out of five peremptory challenges used by the prosecution were for removal of African-American jurors, was not sufficient, particularly when there were obvious, valid,

race-neutral reasons, as explained by the trial court, for removing the jurors. (*People v. Taylor* (2010) 48 Cal.4th 574, 644 (*Taylor*).

(1) Jurors M. and W.

Before using peremptory challenges to excuse M. and W., the prosecutor attempted to remove M. and W. for cause, based on race-neutral reasons. Although such reasons may not have been sufficient to justify dismissing the jurors for cause, they were valid race-neutral grounds for the prosecutor using peremptory challenges to excuse the two jurors. It can reasonably be inferred that these reasons were the same reasons the prosecutor exercised peremptory challenges against the jurors.

As the trial court noted, there were good reasons to excuse M. Her responses to questions seemed incoherent and senseless to some degree, and she claimed she was a “retired public defender for the Los Angeles County,” and “handled a couple of court cases” for the public defender. Yet M. was not an attorney. There were also valid race-neutral reasons for dismissing W. as a juror. She clearly felt that the judicial system did not treat African-Americans fairly and she distrusted the system. W. made it clear she did not trust anyone. This would reasonably lead the prosecutor to conclude W. did not trust the prosecutor and would be sympathetic to defendants.

(2) Juror H.

As to H., Williams argues the trial court’s rationale was faulty because H. stated unequivocally that Williams should not get preferential treatment or be given an advantage because of his race. Williams also argues there was no indication that, just because H. was a social worker, he would favor the underdog. But the reasons noted by

the court for justifying exercising a peremptory challenge against H. were valid, race-neutral reasons. H.'s profession was a common, race-neutral reason for excusing him from the jury. (*Taylor, supra*, 48 Cal.4th at p. 644; *People v. Reynoso* (2003) 31 Cal.4th 903, 924-925 [prosecutor may properly challenge potential jurors on the belief that their occupations do not render them the best type of juror to sit on the case]; *United States v. Thompson* (9th Cir. 1987) 827 F.2d 1254, 1260 [excusing jurors based on their profession is wholly within the prosecutor's prerogative].)

The fact that the prosecution had used two peremptory challenges to remove other African-American jurors (M. and W.), in addition to excusing H., was not sufficient to establish a prima facie case of race discrimination, when there were valid race-neutral reasons for dismissing the three jurors and there remained an African-American juror on the panel, whom the prosecutor stated she would not be excusing. "Indeed, ultimate inclusion on the jury of members of the group allegedly targeted by discrimination indicates "good faith" in the use of peremptory challenges, and may show under all the circumstances that no *Wheeler/Batson* violation occurred." (*Garcia, supra*, 52 Cal.4th at pp. 747-748.)

In *People v. Dement* (2011) 53 Cal.4th 1, 18, the California Supreme Court rejected the defendant's *Wheeler* challenge, which was based on the claim the prosecution had used peremptory challenges to exclude prospective jurors based on gender. The *Dement* court explained: "We conclude that the totality of relevant facts here is inconsistent with an inference of discriminatory purpose. The circumstance that the prosecutor exercised 10 of his 13 peremptory challenges against women is not

dispositive. (*People v. Carasi* (2008) 44 Cal.4th 1263, 1291, 1295 [prosecutor exercised 20 out of 23 peremptory challenges against female prospective jurors; no prima facie case demonstrated]; [*People v. Bonilla* (2007) 41 Cal.4th 313,] 345, 349 [prosecutor used 20 out of 30 peremptories against female prospective jurors; no prima facie case demonstrated].) The prosecutor used only 13 of his 20 available peremptories.” (*Dement*, at p. 19.) Although the instant case concerns race rather than gender discrimination, *Dement* supports the proposition that Williams did not establish a prima facie case based solely on the prosecution using five peremptories of which three were used to remove African-American jurors.

In *Garcia*, *supra*, 52 Cal.4th 706, in which the trial court also denied the defendant’s *Wheeler/Batson* motion asserting gender discrimination, our high court concluded that, “[c]ontrary to what defendant contends, no prima facie case arose based on the sheer number of peremptory challenges underlying the present *Wheeler/Batson* claim. Here, as elsewhere, the “absolute size of th[e] sample” undergoing such scrutiny is “small.” [Citations.] While no prospective juror may be struck on improper grounds, we have found it “impossible,” as a practical matter, to draw the requisite inference where only a few members of a cognizable group have been excused and no indelible pattern of discrimination appears. . . . Similar concerns prevent us from rejecting the instant ruling simply because the prosecutor excused three women at the start of jury selection.” (*Garcia*, at pp. 747-748.)

Here, the record not only does not contain anything that would permit an inference of discrimination; it plainly shows race-neutral reasons for the three peremptory

challenges against M., W., and H.. (See *Garcia, supra*, 52 Cal.4th at p. 748; *Taylor, supra*, 48 Cal.4th at p. 644.) Williams’s contention he established a prima facie case of race discrimination is “‘particularly weak as it consist[s] of little more than an assertion that a number of prospective jurors from a cognizable group had been excused. Such a bare claim falls far short’ of what the law requires to establish a prima facie case. [Citation.]” (See *Garcia*, at p. 750.) We therefore conclude Williams has not demonstrated that the facts and circumstances of the case raise an inference that the prosecutor excluded prospective jurors based on race. (*People v. Hawthorne* (2009) 46 Cal.4th 67, 79.)

IV

VICINAGE

Miller argues there was no vicinage in Riverside County as to count 1 because count 1 was not committed in Riverside County. Therefore the Riverside County Superior Court did not have jurisdiction over count 1. The People contend the Riverside County Superior Court had jurisdiction under section 786. We agree.

“The basic rule of jurisdiction is found in section 777: ‘. . . except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed.’ The ‘jurisdictional territory’ with respect to felonies triable in a superior court is the county. [Citation.] Section 781 provides an exception to section 777 when acts or effects of an offense occur in multiple counties. (*Ibid.*) Section 786, like section 781, is an exception to section 777 and remedial. Consequently, we construe it liberally . . . to achieve its purpose of ‘expanding

criminal jurisdiction beyond rigid common law limits.’ (*Ibid.*)” (*People v. Tamble* (1992) 5 Cal.App.4th 815, 819 (*Tamble*).)

Subdivision (a) of section 786 provides the following exception to the general jurisdiction rule found in section 777: “*When property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory, the jurisdiction of the offense is in any competent court within either jurisdictional territory, or any contiguous jurisdictional territory if the arrest is made within the contiguous territory, the prosecution secures on the record the defendant’s knowing, voluntary, and intelligent waiver of the right of vicinage, and the defendant is charged with one or more property crimes in the arresting territory.*” (§ 786, subd. (a); italics added.)

The Sixth and Fourteenth Amendments to the federal Constitution guarantee a criminal defendant’s right to be tried by a jury drawn from the vicinage, i.e., neighborhood, in which the alleged crime was committed. (*Tamble, supra*, 5 Cal.App.4th at p. 819.) “Although the California Constitution has never contained an express vicinage requirement, the California Supreme Court has held that the common law vicinage right to trial by jury selected from the vicinage or county is implied in the state Constitution.” (*Ibid.*)

As explained in *Tamble, supra*, 5 Cal.App.4th at pages 819-820, “[t]he right to a jury of the vicinage is distinct from venue: vicinage refers to the geographical area from

which the jury is summoned whereas venue is the place of trial. [Citation.] However, ‘[a]s a practical matter, vicinage usually follows venue.’ [Citation.] In California, the boundaries of vicinage are conterminous with the boundaries of the county. [Citation.] Although the vicinage right is assertable by a defendant in a criminal trial, it also protects the right of the offended community to pass judgment in criminal matters. [Citation.]”

Miller argues that section 786 applies only when the defendant has made a “knowing, voluntary, and intelligent waiver of the right of vicinage.” (§ 786, subd. (a).) We disagree. The waiver requirement in section 786 was addressed in *Tamble, supra*, 5 Cal.App.4th 815. In that case, the *Tamble* court concluded that the statute’s reference to the need to secure the defendant’s “waiver of the right of vicinage” applies only to an exception added to the end of section 786 by amendment in 1990, beginning with the language, “or any contiguous jurisdictional territory” (*Tamble*, at pp. 817, 820-821.) The *Tamble* court explained that there is no waiver requirement when the circumstances are as described in the first portion of the statute, that is, “[w]hen property taken in one jurisdictional territory by burglary, carjacking, robbery, theft, or embezzlement has been brought into another, or when property is received in one jurisdictional territory with the knowledge that it has been stolen or embezzled and the property was stolen or embezzled in another jurisdictional territory,” (§ 786; see also *Tamble*, at pp. 820- 821 [burglary of motor home located in San Luis Obispo County may be tried in Santa Barbara County, without obtaining waiver of vicinage rights, because burglars brought stolen goods into that county]; *People v. Simon* (2001) 25 Cal.4th 1082, 1094 [“section 786 has provided, since the original enactment of the Penal Code in 1872, that when property taken by

burglary, robbery, theft, or embezzlement in one county has been brought into another county, the trial of the initial burglary, robbery, theft, or embezzlement offense may be held in either county”]; *People v. Sakarias* (2000) 22 Cal.4th 596, 630-632 [under section 786, trial in the county where the stolen property was transported, and not where defendant committed the burglary and theft, did not violate the defendant’s vicinage rights under Sixth Amendment of the United States Constitution].)

In the instant case, trial of count 1 in Riverside County did not violate Miller’s vicinage rights because under section 786 the case could be tried in the county where defendants drove the stolen Honda and used it in committing additional crimes. Defendants carjacked McDonald’s Honda in Los Angeles County (count 1), and several days later drove the stolen Honda to Moreno Valley, in Riverside County and used the Honda to commit additional crimes in Moreno Valley. These facts fall within the first scenario described in section 786: “When property taken in one jurisdictional territory by . . . carjacking, . . . has been brought into another . . .” A “jurisdictional territory,” within the meaning of section 786, is a county. (*Tamble, supra*, 5 Cal.App.4th at p. 819.) Accordingly, there was jurisdiction of the carjacking offense (count 1) in any competent court within either Los Angeles or Riverside Counties. (See § 786, subd. (a).)

Miller argues that there was insufficient evidence establishing that the red Honda defendants carjacked in Culver City was the same red Honda used when defendants committed the carjacking in Moreno Valley. The evidence, however, including defendants’ recorded statements, is more than sufficient to support a reasonable finding that defendants used the same car they had recently carjacked in Culver City. There was

thus sufficient evidence establishing “a reasonable relationship or nexus between the place designated for trial and the commission of the offense.” (*Price v. Superior Court* (2001) 25 Cal.4th 1046, 1075.) Even though the carjacking was complete by the time defendants drove the Honda to Riverside County, the Honda remained stolen property in defendants’ possession and was used to commit additional crimes.

V

SUFFICIENCY OF EVIDENCE OF KIDNAPPING

Miller contends there was insufficient evidence to support his conviction for aiding and abetting in the aggravated kidnapping of Jones (§ 209, subd. (b)(1); count 3) or the lesser offense of simple kidnapping (§ 207, subd. (a)). Miller argues the evidence was insufficient because there was no evidence of the requisite element of asportation of the victim, which must constitute movement “beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.” (§ 209, subd. (b)(2).) Miller also argues there was insufficient evidence of the necessary intent element required to be found guilty of aiding and abetting in the commission of either simple or aggravated kidnapping.

A. *Kidnapping Law*

Generally, to prove the crime of kidnapping, the prosecution must prove three elements: (1) a person was unlawfully moved by the use of physical force or fear; (2) the movement was without the person’s consent; and (3) the movement of the person was

substantial in character. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 (*Martinez*); *People v. Jones* (2003) 108 Cal.App.4th 455, 462; § 207, subd. (a).)

Simple kidnapping, as defined in section 207, and aggravated kidnapping, as defined in section 209, involve different standards of asportation. Aggravated kidnapping, such as kidnapping for robbery, requires movement of the victim that is not merely incidental to the commission of the robbery, and which substantially increases the risk of harm over and above that necessarily present in the crime of robbery. (*Martinez, supra*, 20 Cal.4th at p. 233.)

In contrast, simple kidnapping only requires movement of a substantial character, which is neither slight nor trivial. (*Martinez, supra*, 20 Cal.4th at pp. 233, 235, 237.) In determining whether the victim was moved a distance that was substantial in character, the jury must consider the totality of the circumstances, including “whether that movement increased the risk of harm above that which existed prior to the asportation, decreased the likelihood of detection, and increased both the danger inherent in a victim’s foreseeable attempts to escape and the attacker’s enhanced opportunity to commit additional crimes.” (*Ibid.*) There is no minimum number of feet a defendant must move a victim in order to satisfy the asportation element in a simple kidnapping. “[L]imiting a trier of fact’s consideration to a particular distance is rigid and arbitrary, and ultimately unworkable.” (*Id.* at p. 236.)

B. Aiding and Abetting Law

The mental state necessary to convict Miller as an aider and abettor is different from the mental state necessary to convict him as an actual perpetrator. (*People v.*

Mendoza (1998) 18 Cal.4th 1114, 1122.) “The actual perpetrator must have whatever mental state is required for each crime charged, An aider and abettor, on the other hand, must ‘act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.’ [Citation, original italics.]” (*Id.* at p. 1123.) An aider and abettor “may be held criminally responsible as an accomplice not only for the crime he or she intended to aid and abet (the target crime), but also for any other crime that is the ‘natural and probable consequence’ of the target crime.” (*People v. Prettyman* (1996) 14 Cal.4th 248, 261.)

As our high court has stated, “the doctrine enunciated in *People v. Beeman* (1984) 35 Cal.3d 547, 554-555 . . . , that one may be liable as an aider and abettor ‘when he or she aids the perpetrator of an offense, knowing of the perpetrator’s unlawful purpose and intending, by his or her act of aid, to commit, encourage, or facilitate commission of the offense, “snares all who intentionally contribute to the accomplishment of a crime in the net of criminal liability defined by the crime, even though the actor does not personally engage in all of the elements of the crime.” [Citation.]’ [Citation.] Aiding and abetting does not require participation in an agreement to commit an offense, but merely assistance in committing the offense. [Citation.]” (*People v. Morante* (1999) 20 Cal.4th 403, 433.)

C. Discussion

Miller’s trial attorney acknowledged during closing argument that he anticipated the jury would find Miller guilty of the two carjackings and robbery, but not the

aggravated kidnapping (count 3), because Miller was not the perpetrator of the kidnapping and did not aid or abet in kidnapping Jones. Miller asserts this on appeal, as well.

(1) Sufficiency of Evidence of Asportation

Miller argues there was insufficient evidence of the requisite element of asportation because there was no evidence the danger to Jones was substantially increased when he returned to the Camaro and drove Williams to the bank. Jones had control of his own car and drove from a less populated area to a more populated area nearby. But there was other evidence establishing asportation. There was evidence Jones returned to the Camaro after walking only about 10 feet away from defendants and still feared for his safety and the safety of his girlfriend, who was nearby. Defendants had just taken Jones's car at gunpoint and threatened to shoot him. They ordered him back into the Camaro, and Williams told him to drive to the bank, while Williams sat next to Jones with a gun in his lap. This increased the likelihood of Jones being shot, harmed, or victimized in some other way, and decreased his ability to flee and get assistance. It also reduced the likelihood of detection of Jones being victimized. The movement of Jones returning to the Camaro and driving to the bank was not merely incidental to the commission of the underlying robbery crime, and substantially increased the risk of harm to Jones above that necessarily present in the underlying robbery offense.

(2) Sufficiency of Evidence of Aiding and Abetting

Miller argues that, even if the evidence of asportation was sufficient to support a finding of simple or aggravated kidnapping, there was no evidence Miller participated in

or aided and abetted in the kidnapping. Miller asserts the evidence showed he was not responsible for the kidnapping and did not intend to participate in it. When Frison called Jones back to the Camaro, Miller urged Williams and Frison to leave the Camaro and get in the Honda. Frison got back in the Honda, but Williams ignored Miller and told Jones to drive him to the bank in the Camaro. Miller claims he remained silent, did not get out of the Honda, and played no role in Jones getting back in the Camaro and driving Williams to the bank. We disagree.

There was substantial evidence Miller was involved in the kidnapping and robbery. He pulled up in the Honda, next to the Camaro when Frison told Jones to return. There was also evidence Miller was present when the men asked Jones where they could use his credit cards and where the nearest bank was. A reasonable inference can be made Miller was aware Jones was driving Williams to the bank to force Jones to withdraw money from his bank account. Miller followed behind the Camaro to the bank. Miller parked the Honda near the Camaro, in front of the bank, and accompanied Williams and Frison as they escorted Jones to the ATM machine. After Jones withdrew money, Miller took Jones's ATM receipt and ATM card, and tried to withdraw more money from Jones's account. Miller also admitted during his recorded statement to the police that he followed the Camaro to the bank because Jones offered the men money for not taking his car. Miller stated: "I will admit to . . . probably following him . . . to get the money." This evidence was more than sufficient to establish Miller aided and abetted in the kidnapping to commit robbery.

Miller argues that the fact he drove behind Jones to the bank does not support a finding of aiding and abetting because Jones testified he was unaware Miller was following him to the bank. But Jones testified he knew Miller was following him and had parked near the Camaro upon arriving at the bank. Although Jones also testified he was “unconscious” of Miller following him, he stated this in the context of testifying he was so scared of Williams sitting next to him with a gun in his lap that Jones was not thinking about Miller following him. Furthermore, regardless of whether Jones was aware of Miller following him, the evidence was sufficient to show that Miller intended to facilitate, encourage and participate in kidnapping Jones to commit robbery. The evidence showed that Miller provided backup assistance to Williams during the kidnapping and robbery, and Miller was not merely an innocent bystander; he aided and abetted in the kidnapping by encouraging, facilitating, and assisting in the commission of the kidnapping for robbery offense.

VI

CALJIC No. 1203

Miller contends the trial court erred in giving the following modified version of jury instruction, CALCRIM No. 1203, on aggravated kidnapping: “As used here, ‘substantial distance’ means more than [a] slight or trivial distance. The movement must have substantially increased the risk of physical or psychological harm to the person beyond that necessarily present in the robbery. [¶] In deciding whether the movement was sufficient, consider all of the circumstances relating to the movement, *including whether the movement decreased the likelihood of detection or increased the danger*

inherent in the victim's foreseeable attempts to escape, or whether the kidnapper's opportunity to commit additional crimes was enhanced.” The italics show the portion of the instruction modified by adding the italicized language (the modification). Williams’s attorney requested the modification, and Miller’s attorney did not object.

Miller argues the trial court failed to explain to the jury that, in order to find him guilty of aggravated kidnapping for robbery, the jury was required to find that the victim’s movement was not merely incidental to the robbery and such movement increased the risk of harm to the victim, beyond that present in committing the robbery. Miller acknowledges that, before giving the modified instruction, the trial court instructed the jury that Miller had to move the victim a “substantial distance” and the victim must have been “moved or made to move a distance beyond that merely incidental to the commission of the robbery.” Miller argues, however, that the modification language negated the requirement the movement of the victim be more than merely incidental to the crime.

We disagree. The modified instruction provides an accurate and complete statement of the law applicable to the crime of aggravated kidnapping for robbery. The instruction, as a whole, instructs the jury that the movement must be more than merely incidental to the robbery and increase the risk of harm to the victim. The court instructed the jury that, in order to prove kidnapping for robbery, the prosecution must prove the victim was moved a “substantial distance” and “was moved or made to move a distance beyond that merely incidental to the commission of the robbery.” The court further instructed that “substantial distance means more than a slight or trivial distance. The

movement must have substantially increased the risk of physical or psychological harm to the person beyond that necessarily present in the [robbery.]” The modification language further clarified that, in deciding whether the movement was sufficient, the jury must consider various enumerated circumstances, which might increase the risk of harm.

As explained in *People v. Dominguez* (2006) 39 Cal.4th 1141, a robbery, as necessary predicate for an aggravated kidnapping (§ 209), “can of course be committed in a variety of ways. To catalog all the myriad and various possible aspects of such crimes would be impossible. But beginning with the template established in [*People v. Daniels* (1969) 71 Cal.2d 1119,] 1139, prohibiting increased liability for aggravated kidnapping for what are essentially brief and trivial movements in ‘standstill’ robberies or for movements ‘merely incidental’ to commission of the offense, through [*People v. Rayford* (1994)] 9 Cal.4th 1, the applicable test under former section 208(d) is clear: for aggravated kidnapping, the victim must be forced to move a *substantial distance*, the movement cannot be merely *incidental* to the target crime, and the movement must *substantially increase* the risk of harm to the victim. Application of these factors in any given case will necessarily depend on the particular facts and context of the case.” (*Dominguez*, at pp. 1152-1153.) CALJIC No. 1203, as modified in the instant case, appropriately instructed the jury on the factual findings required to convict Miller of the crime of kidnapping for robbery under *Dominguez, supra*, 39 Cal.4th at pp. 1152-1153.

VII

STAYING COUNT 2 SENTENCE

Miller contends his sentence on count 2 (carjacking; § 215, subd. (a)) must be

stayed under section 654 because the carjacking of Jones’s car was part of the same course of conduct as the kidnapping for robbery (count 3). Sentencing on the robbery conviction (count 4) has already been stayed.

Section 654, subdivision (a), as relevant here, provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

“The test for determining whether section 654 prohibits multiple punishment has long been established: ‘Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. . . .’ [Citation.]” (*People v. Britt* (2004) 32 Cal.4th 944, 951-952.) “[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] ¶ If, on the other hand, defendant harbored ‘multiple criminal objectives,’ which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, ‘even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.’ [Citation.]” (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) ““A trial court’s implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence.” [Citation.]’ [Citation.]” (*People v. Sanchez* (2009) 179 Cal.App.4th 1297, 1310 [Fourth Dist., Div. Two].)

Citing *People v. Lopez* (2003) 31 Cal.4th 1051, 1063 (*Lopez*), Miller argues section 654 applies to the carjacking and kidnapping for robbery convictions because the carjacking was not committed until after Jones returned to his car to help defendants drive the car. Therefore it was committed with the same objective and during the course of committing the kidnapping for robbery crime. The People argue the carjacking was committed before the kidnapping for robbery offense and therefore section 654 does not apply.

As defined in section 215, subdivision (a), a “‘Carjacking’ is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence . . . against his or her will and with the intent to either permanently or temporarily deprive the person in possession of a motor vehicle of his or her possession, accomplished by means of force or fear.” Establishing a “carjacking” requires substantial evidence of “either an intent to permanently or temporarily” “take” a vehicle from a person possessing it, a passenger in it, or such a person’s immediate presence, by means of force or fear. (*Lopez, supra*, 31 Cal.4th at pp. 1058-1059.)

Asportation of the vehicle is one of the requisite elements of a carjacking. “‘[N]o great movement is required, and it is not necessary that the property be taken out of the physical presence of the victim.’ [Citation.] “[S]light movement” is enough.’” (*Lopez, supra*, 31 Cal.4th at pp. 1060, 1062-1063.) Indeed, “‘[a]ny removal, however slight’” is sufficient. (*Id.* at p. 1060.) Thus, it has been said regarding asportation that whether a defendant “conveyed [the car] one yard or one mile . . . is immaterial.” (*People v. Clark*

(1945) 70 Cal.App.2d 132, 133, followed in *People v. Cooper* (1991) 53 Cal.3d 1158, 1165.)

In *Lopez*, the California Supreme Court reversed the defendant's carjacking conviction on the ground there was no asportation or movement of the motor vehicle. (*Lopez, supra*, 31 Cal.4th at p. 1063.) In *Lopez*, the defendant pointed a gun at the victim, who was sitting in the driver's seat of his van. The defendant ordered the victim out of his van. The victim got out, leaving his keys in the ignition. After the defendant got in the van and sat in the driver's seat, the victim returned to the van to retrieve checks he had left inside the van. The defendant attempted to fire his gun at the victim but the gun malfunctioned and the defendant fled from the van. (*Id.* at p. 1055.) The *Lopez* court held there was insufficient evidence of a carjacking because "[s]ection 215, subdivision (a), requires 'the felonious taking of a motor vehicle . . . *from* . . . [the] person or immediate presence' of the possessor or passenger. (Italics added.) It does not require the felonious taking of the possessor or passenger *from* the motor vehicle.[] Consequently, defendant's conduct is punishable as an attempted carjacking. ([*People v. Vargas* (2002) 96 Cal.App.4th 456,] 463 [carjacking conviction reduced to lesser included offense of attempted carjacking].)" (*Lopez*, at p. 1063.)

Under *Lopez*, there was no carjacking in the instant case when defendants initially attempted to drive off in Jones's car and were unable to operate the stick shift, because there was no movement of the car. There was, at most, merely an attempted carjacking up until Jones returned to the car to assist in driving it. The movement of the car occurred when Jones got back in the car and was forced to drive to the bank ATM.

Although there was no completed carjacking offense when defendants initially took Jones's car at gunpoint and unsuccessfully attempted to drive the car, the trial court could reasonably find that Williams and his companions did not abandon their objective of carjacking Jones's car, when they could not operate the stick shift. They continued their objective of carjacking Jones's car by calling Jones back to assist in driving the car. Jones returned to the car and drove the car in compliance with Williams's demand, while Williams sat in the front seat with a gun in his lap. The asportation element for carjacking was thus satisfied.

Although the asportation took place during commission of the kidnapping for robbery crime, section 654 does not apply because defendants formed the intent to carjack Jones's car and initiated the crime before carrying out the newly conceived objective of kidnapping Jones in furtherance of robbing him at the ATM. The carjacking and kidnapping for robbery objectives were separate, with only the asportation element overlapping. Whether defendants had multiple criminal objectives is a question of fact for the trial court to resolve. As with all factual determinations, we must affirm the trial court's finding if it is supported by substantial evidence. (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) Here, there was substantial evidence supporting the trial court's implied finding that defendants formed separate objectives when they committed the carjacking and kidnapping for robbery crimes.

The instant case is distinguishable from *Lopez* because the defendant in *Lopez* abandoned his plan to carjack the van without having moved the vehicle. Here, there initially was no movement of the car because Frison was unable to operate Jones's car,

but it can be reasonably inferred the carjacking continued when Jones was told to return to his car to assist in driving it and drove Williams at gunpoint to the bank. Unlike in *Lopez*, defendants did not abandon their initial objective of carjacking Jones's car. We therefore reject Miller's argument that the kidnapping for robbery sentence should have been stayed under section 654 and conclude it was appropriate for the trial court to impose consecutive sentences for the carjacking and kidnapping for robbery convictions.

VIII

FINES AND FEES

Defendants' abstracts of judgment state that the trial court imposed fines and fees against them in the amounts of \$120 (Gov. Code, § 70373), \$160 (§ 1465.8), and \$40 (§ 1202.5). During sentencing, the trial court found that defendants did not have the ability to pay these fines and fees.

Williams contends that, because the trial court found that he did not have the ability to pay the fines and fees, his abstract of judgment incorrectly states he is required to pay them. Miller joins in Williams's arguments on appeal, and also argues the section 1202.5 fine of \$40 must be reduced to \$10, because the \$10 fine can only be imposed once, and not on each of the four counts. The People agree, as does this court, that only a single \$10 fine under section 1202.5 can be imposed against defendants.

We conclude the other fees of \$120 and \$160 were properly imposed against defendants, even though the court found that defendants did not have the ability to pay the fines. Irrespective of defendants' financial ability to pay, the trial court was required to impose the \$120 and \$160 fees under section 1465.8, subdivision (a)(1) and

Government Code section 70373, subdivision (a)(1). Defendants' abstracts of judgment correctly reflect imposition of these two mandatory fees.

IX

DISPOSITION

The judgments as to Miller and Williams are modified to reflect a reduction, from \$40 to \$10, of the restitution fine imposed under section 1202.5, subdivision (a). In all other respects, the judgments are affirmed. The trial court is directed to amend the abstracts of judgment and minute orders to reflect these modifications, and to forward certified copies of the amended abstracts of judgment to the Department of Corrections and Rehabilitation. (§§ 1213, 1216.)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

KING
J.