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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ESTRADA HERRERA,

Defendant and Appellant.

F067616

(Super. Ct. No. F12909316)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Hilary A. Chittick, Judge.

Suzanne M. Morris, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen and Michael A. Canzoneri, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Daniel Estrada Herrera was charged with two counts each of second degree robbery and receiving stolen property, as well as assault with a firearm. When the

jury returned its verdicts, those verdicts reflected acquittal on all counts. After the verdicts were read into the record and the court began to read the final or concluding instruction, the foreperson advised the court the wrong verdict forms had been completed as to two of the five counts. The court sent the jury back into the deliberation room with the verdict forms and instructed the jury to review them. The jury then returned with acquittals as to counts 1 through 3, and guilty verdicts as to counts 4 and 5.

On appeal, defendant complains the trial court lacked the authority to direct the jury to reconsider its verdict of acquittal on all counts. More specifically, defendant contends the “verdicts of acquittal were complete and the jury had been effectively discharged before the purported error was brought to the court’s attention.” In a related argument, defendant contends the principle of double jeopardy precludes retrial on counts 4 and 5. We will affirm.

PROCEDURAL BACKGROUND

In an amended information, defendant was alleged to have committed second degree robbery (Pen.¹ Code, § 211) against victims Miguel Davila (count 1) and Martin Munguia (count 2). It was also alleged defendant assaulted Munguia with a firearm. (§ 245, subd. (a)(2); count 3.) Moreover, it was alleged defendant was in possession of stolen property (§ 496, subd. (a)) belonging to both Davila and Munguia (counts 4 & 5). Defendant’s personal use of a firearm in violation of section 12022.53, subdivision (b) was alleged as to counts 1 and 2, and personal use of a firearm in violation of section 12022.5, subdivision (a) was alleged as to counts 1 through 3. Prior strike and prison terms were also alleged.

Following a jury trial, defendant was convicted of both counts of receiving stolen property. He was acquitted of the second degree robbery and assault charges. Defendant was sentenced to a total of five years in state prison. This appeal followed.

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

Because the facts are not relevant to the issues on appeal, we forgo a recitation of them here.

DISCUSSION

Defendant contends the trial court lacked authority to direct the jury to reconsider its verdict of acquittal on all counts. He maintains the verdicts were unambiguous and complete, and the jury had been effectively discharged. We find the verdict was not complete because the jurors spoke up to advise the court of their error, and the jury was not “effectively” or otherwise discharged at that time. Hence, the trial court did not err by resubmitting the verdict forms to the jury for its review and any needed revision.

Proceedings Below

We find it important to excerpt the entirety of the colloquy concerning the verdicts:

“THE COURT: We’re on the record in the Herrera matter. The Court’s been advised that the ladies and gentlemen of the jury have reached a verdict, so we’ll have them come in.

“(Jury enters the courtroom.)

“THE COURT: Please be seated. Okay, could the foreperson please identify. [Redacted], sir, the Court’s been advised the ladies and gentlemen of the jury have reached a verdict; is that correct?

“A JUROR: That is correct.

“THE COURT: Could you hand the whole binder, just hand the whole binder to my bailiff.

“A JUROR: With the sheets in it?

“THE COURT: Everything.

“(Pause in proceedings.)

“THE COURT: All right. Madame Clerk, could you please read the verdict.

“THE CLERK: In the Superior Court of the State of California in and for the County of Fresno. The People of the State of California versus Daniel Estrada Herrera. Case number F12909316. Verdict. We the jury in

the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of a violation of Section 211 ..., second degree robbery, as charged in Count 1 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of a violation of Section 211 ..., second degree robbery, as charged in Count 2 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of a violation of Section 245(a)(2) ..., assault with a firearm, as charged in Count 3 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of violation of Section 240 ..., simple assault, a lesser included charge to Count 3 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of violation of Section 496(a) ..., receiving stolen property as charged in Count 4 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, not guilty of violation Section 496(a) ..., receiving stolen property as charged in Count 5 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“THE COURT: All right. Does either counsel wish the jury polled?

“[PROSECUTOR]: No, your Honor.

“[DEFENSE COUNSEL]: No, your Honor.

“THE COURT: All right. Is there anything further before the ladies and gentlemen of the jury are discharged?

“[PROSECUTOR]: No, your Honor.

“[DEFENSE COUNSEL]: No, your Honor.

“THE COURT: All right. Ladies and gentlemen, you have completed your jury service.

“A JUROR: We have a question. I think the wrong form was filled for the last two.

“A JUROR: Yeah, the last two.

“A JUROR: We all agree the last two were—

“A JUROR: We filled out the last two, or I did.

“A JUROR: The last two were supposed to be found guilty.

“THE COURT: Okay. You know what, let me hold on to these and I will send you back into the jury room and let me consult with counsel.

“(Jury leaves the courtroom.)

“THE COURT: The ladies and gentlemen of the jury have not been discharged and I have to do some research, but I believe I can submit all of the verdict forms back to them, but I need to do some research on the question of whether the reading of the verdict constituted an acquittal. And candidly, I don’t know the answer to that question. But I believe since the Court has not yet discharged the ladies and gentlemen of the jury, they could in theory reconsider. So if you’ll give me just a few minutes, I’m assuming neither of you have ever had anything like this happen before.

“[DEFENSE COUNSEL]: No.

“[PROSECUTOR]: No.

“[DEFENSE COUNSEL]: No.

“DEFENDANT: Me either.

“THE COURT: Okay. I’m pretty comfortable that I have not discharged them and therefore they can reconsider. And as you saw, I hadn’t done anything.

“[DEFENSE COUNSEL]: No, I understand.

“THE COURT: So if you’ll give me—and a different verdict on the last two counts would be consistent with the arguments that were made.

“[DEFENSE COUNSEL]: I was a little surprised, yes.

“THE COURT: So if you’ll give me just a moment, let me go try to do some research to figure out the answer to this question.

“[DEFENSE COUNSEL]: Okay.

“THE COURT: It is clear to the Court, however, as to Counts 1, 2 and 3, I mean, as the jurors were voicing their concerns, they made it clear it was just on the last two counts.

“[DEFENSE COUNSEL]: Well, and that’s—I didn’t want them polled, but of course normally when they go against me, I always ask that they be polled because of these kind of situations.

“THE COURT: Exactly. I understand that. If you’ll give me just a moment, I’m going to go do some research. If the Court has the authority to send the verdict forms back in, I intend to send the verdict forms back in.

“[DEFENSE COUNSEL]: Understood.

“THE COURT: If the Court does not have the authority, then the Court does not have the authority.

“[DEFENSE COUNSEL]: Okay.

“THE COURT: You are free to call your—whoever the gurus are in your offices to see what they have to say.

“[DEFENSE COUNSEL]: There are very few left anymore.

“(Recess taken.)

“THE COURT: We’re on the record outside the presence of the ladies and gentlemen of the jury. I think the record should reflect that while the Court—as the Court started to read 3590, several jurors expressed their feeling that the wrong verdict forms had been filled out as to the last two counts and so the Court excused the ladies and gentlemen of the jury. I’ve taken an opportunity to do some research. I didn’t find a case on point.

“[DEFENSE COUNSEL]: And while the Court’s looking at the Penal Code—

“THE COURT: Yes?

“[DEFENSE COUNSEL]: I spoke with [another attorney].

“THE COURT: Okay.

“[DEFENSE COUNSEL]: And he, in the limited amount of time that we had, recommended I look at ... Section[s] 1161 through 1164, which the Court may already be looking at.

“THE COURT: Right. I have 1164. And 1164 reads, when a verdict given is receivable by the court, the clerk shall record it in full upon the minutes and if requested by any party shall read it to the jury and inquire of them whether it is their verdict. If any juror disagrees, the facts shall be entered upon the minutes and the jury again sent out. But if no disagreement is expressed, the verdict is complete and the jury shall subject to subdivision B be discharged from the case.

“Subdivision B simply says that the jury shall not be discharged until the Court has verified that the jury either has reached a verdict or has declared its inability to reach a verdict.

“It seems to the Court in this particular case that I have not discharged the ladies and gentlemen of the jury. What the Court intends to do is send all the verdict forms back in with them and ask them to review the verdict forms and provide the Court with a true and correct set of verdict—whatever their verdict is as to all five counts. And to the extent there are verdict forms that were entered in error, that they cross them out and the foreperson initial the crossed out verdict form so that it is clear that it is not the correct verdict form.

“[DEFENSE COUNSEL]: That’s the Court’s intention?

“THE COURT: That’s the Court’s intention.

“[DEFENSE COUNSEL]: Just for preservation of appeal—

“THE COURT: I understand.

“[DEFENSE COUNSEL]: —I will interpose an objection.

“THE COURT: Yes.

“[DEFENSE COUNSEL]: Based on ... Sections 1161 through 1164.

“THE COURT: Okay. I understand.

“[DEFENSE COUNSEL]: I don’t know if I can be any more specific, because I haven’t done enough research on it.

“THE COURT: I understand.

“[DEFENSE COUNSEL]: But just preserve any issue for appeal.

“THE COURT: Right. Right. It just does appear to the Court that in this unique set of circumstances since the jury was not discharged, since it does not appear to the Court based on the reaction of the jurors that this is

somebody who has suddenly remorse that no, they've changed their mind about what they want their verdict to be, that this is a genuine situation which the incorrect verdict form was signed by the foreperson, or at least that's the representation that's made. I cannot say at this point that I have a unanimous verdict.

"I am going to send all the verdict forms back in, even the ones on which they have not expressed a doubt, because I don't want there to be an implication that I'm telling them what their verdict should be as to any count.

"So let's get the jurors back in here and I'll try to explain this to them.

"And your objection is noted for the record.

"[DEFENSE COUNSEL]: And also, just while I'm thinking off the top of my head, just to interpose a double jeopardy objection.

"THE COURT: Okay.

"[DEFENSE COUNSEL]: If it applies.

"(Jury enters the courtroom.)

"THE COURT: All right, please be seated. Ladies and gentlemen, we're back on the record. What the Court's going to do is I'm going to send you back in with all the verdict forms. I'll allow you to review the verdict forms. If these are the correct verdicts, that's fine, just go ahead and leave them the way they are and notify me. If there's some verdict in here that's incorrect and you have a different unanimous verdict than the one that was actually signed, please have your foreperson date and sign the correct verdict form. And to the extent there is one that's dated and signed that is incorrect, the foreperson, if any, the foreperson may cross out his signature and initial the cross-out so that I'll have one that shows that that was not in fact the correct verdict. Okay? So all of these are going back in with you. You have the authority to render whatever verdict you wish with respect to each and every count.

"(Court adjourned subject to call.)

"THE COURT: Okay, please be seated. [Redacted], are you the foreperson?

"A JUROR: Yes.

“THE COURT: Could you hand the verdicts. I’ve been advised the jurors have reached a verdict as to all five counts; is that correct?”

“A JUROR: That’s correct.

“THE COURT: Okay.

“(Pause in proceedings.)

“THE COURT: Okay. As to Counts 1 through 3, the verdict remains the same, so the Clerk will not reread those first three.

“Go ahead and read the last two.

“THE CLERK: Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, guilty of a violation of Section 496(a) ..., receiving stolen property, as charged in Count 4 of the information filed herein. Dated June 14, 2013. Signed by foreperson.

“Same caption. We the jury in the above entitled action find the defendant, Daniel Estrada Herrera, guilty of a violation of Section 496(a) ..., receiving stolen property, as charged in Count 5 of the information filed herein. Dated June 14th, 2013. Signed by foreperson.

“THE COURT: Okay. [Redacted], sir, the Court also has two verdict forms on which your signature is crossed out and there are initials; are those your initials on those two verdict forms?”

“A JUROR: That is correct.

“THE COURT: Those are each verdict forms for not guilty of receiving stolen property?”

“A JUROR: That is correct.

“THE COURT: All right. So I have a guilty—or not guilty verdicts as to Counts 1 through 3 and guilty verdicts as to counts 4 and 5.

“Now, does either counsel wish the jury polled as to all five counts or any count?”

“[DEFENSE COUNSEL]: Not by the defense.

“[PROSECUTOR]: No, your Honor.

“THE COURT: Okay. Are there any further issues that either counsel wishes to raise before the jury is discharged?”

“[DEFENSE COUNSEL]: Not by the defense.

“[PROSECUTOR]: No, your Honor.

“THE COURT: Okay. Now, several of you piped up before. Without asking you all individually, you have rendered not guilty verdicts as to Counts 1, 2 and 3 and guilty verdicts as to counts 4 and 5. Does any juror have any concerns that that is not your true and correct verdict? If so, please raise your hand. Okay, the Court shows no hands being raised.

“And unless there’s anything further, the Court will order that verdict—those verdicts to be entered into the minutes of the court and discharge the ladies and gentlemen of the jury.

“Ladies and gentlemen, you have now completed your jury service in this case. On behalf of the judges of the court, please accept my thanks for your time and effort....”

Applicable Legal Authority & Analysis

The issues here involve the trial court’s handling of the jury’s verdicts. We begin with a recitation of the applicable statutory authority. Section 1163 provides as follows:

“When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.”

Subdivision (a) of section 1164 then states, in pertinent part:

“When the verdict given is receivable by the court, the clerk shall record it in full upon the minutes, and if requested by any party shall read it to the jury, and inquire of them whether it is their verdict. If any juror disagrees, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall, subject to subdivision (b), be discharged from the case.”

In this case, the clerk read all verdicts as “not guilty” on counts 1 through 5. Neither party wished to have the jury polled. Thereafter, the court began to read the final or concluding instruction. Several jurors then interrupted to advise the court that the verdict forms were incorrectly completed. In fact, the jury intended to complete not guilty verdict forms regarding counts 1 through 3, and guilty verdict forms for counts 4 and 5.

“Every criminal defendant is entitled to a unanimous verdict. [Citations.] And to be valid a criminal verdict must express the independent judgment of each juror. [Citation.]” (*People v. Bento* (1998) 65 Cal.App.4th 179, 186.) As the Supreme Court stated in *People v. Hendricks* (1987) 43 Cal.3d 584, 597: “Once a “complete” verdict has been rendered per [section 1164] ... and the jurors discharged, the trial court has no jurisdiction to reconvene the jury regardless of whether or not the jury is still under the court’s control [citation].” However, a verdict is not complete if a juror dissents during polling (*People v. Green* (1995) 31 Cal.App.4th 1001, 1009-1010), the verdict does not resolve a count charged (*People v. Hernandez* (1985) 163 Cal.App.3d 645, 656–657), or the verdict does not make a required finding (*Gray v. Superior Court* (1989) 214 Cal.App.3d 545, 549-552 [guilty verdict on murder charge incomplete when it did not specify degree of murder]).

A trial court may not reconvene a jury and attempt to correct a defective verdict after the verdict is recorded and the jury discharged and dispersed. (See *People v. Soto* (1985) 166 Cal.App.3d 428, 435.) But, if the jurors are still “in the box,” the judge may rescind the discharge order and thereby permit correction of a mistake in the verdict. (*People v. Powell* (1950) 99 Cal.App.2d 178, 180-182.) In *People v. Cain* (1995) 10 Cal.4th 1, 54-55, the California Supreme Court explained “any error in the verdict may be corrected by reconvening the jury, as long as the jurors have not lost their character as jurors by, for example, discharge or receiving information inadmissible in the relevant phase of the proceeding.”

The governing principles are synthesized in *People v. Hendricks, supra*, 43 Cal.3d at page 597:

“Once a “complete” verdict has been rendered per ... section 1164 [i.e., a verdict that has been received and read by the clerk, acknowledged by the jury, and recorded] and the jurors discharged, the trial court has no jurisdiction to reconvene the jury regardless of whether or not the jury is still under the court’s control [citation]. However, if a complete verdict has not been rendered [citations] ..., jurisdiction to reconvene the jury depends

on whether the jury has left the court's control. If it has, there is no jurisdiction [citations]; if it hasn't, the jury may be reconvened [citations].”

The latter rule is “designed to guarantee a fair trial, controlled by the court and shielded from outside influences.” (*People v. Hendricks, supra*, 43 Cal.3d at p. 597.) The most significant factor is whether the jurors were released from the court's control. (*Id.* at pp. 597-598, citing *People v. Thornton* (1984) 155 Cal.App.3d 845, 856.)

“[D]ischarge ... results in sending the jurors back to the outside world freed of all the admonitions that previously guarded their judgments from improper influences. Once freed, the jurors can properly discuss the case with the district attorney and the People's witnesses, they can read about it in the media and they can entertain “facts” or opinions about it from any source. The essence of cases ...’ in which jurors left the jury box and reconvening was held improper ... [and cases] in which they did not leave the box and reconvening was held proper[] ‘is the incalculable and irreversible effect of this loss of control The conclusion is inescapable that a discharge accompanied by loss of control of the jury divests the court of jurisdiction to reconvene them” (*People v. Hendricks, supra*, 43 Cal.3d at pp. 597-598.)

In this case, the verdict was not complete. Generally, a verdict is complete under section 1164 if it has been read and received by the clerk, acknowledged by the jury, and recorded. (*People v. Hendricks, supra*, 43 Cal.3d at p. 597; *People v. Bento, supra*, 65 Cal.App.4th at p. 188.) Here, while the court asked the jurors upon their entrance into the courtroom whether they had reached a verdict, once the clerk read the verdict, the jury did not acknowledge those verdicts as true and correct. Quite the contrary. At what appears to be the earliest opportunity, several jurors advised the court of the problem—they had filled out the wrong form. It is the oral declaration of the jurors, rather than the submission of written verdict forms, that constitutes the return of the verdict. (*People v. Lankford* (1976) 55 Cal.App.3d 203, 211, disapproved on another point in *People v. Collins* (1976) 17 Cal.3d 687, 695.) The only oral declaration by the jurors here comports with the verdicts recorded. The clerk's transcript on appeal reveals the verdicts recorded were not guilty as to counts 1 through 3 and guilty as to counts 4 and 5. Therefore, it cannot be said the verdicts were complete. And, “[u]ntil the verdict is

complete the trial court is ... empowered to reconvene the jury for reconsideration of its verdict” (*People v. Green, supra*, 31 Cal.App.4th at p. 1010.)

Next, the trial court was correct: it had not yet discharged the jury. In fact, the court had read only the first sentence of the final instruction² before the jurors interrupted the court to advise the verdict forms did not accurately reflect their verdicts. Because the jury had not been discharged, the trial court did not err in allowing the jury to return to the deliberation room in order to review the verdict forms. (*People v. Powell, supra*, 99 Cal.App.2d at p. 181 [error discovered before jury permitted to leave box; jury not discharged].) Further, the jury below never lost its character as a jury because it was never discharged. (*Id.* at p. 182; *People v. Cain, supra*, 10 Cal.4th at pp. 54-55.) Nor did the court lose control over discharged jurors. “[D]ischarge ... results in sending the jurors back to the outside world free of all the admonitions that previously guarded their

²CALCRIM No. 3590 provides the following in pertinent part:

“You have now completed your jury service in this case. On behalf of all the judges of the court, please accept my thanks for your time and effort.

“Now that the case is over, you may choose whether or not to discuss the case and your deliberations with anyone.

“I remind you that under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.

“Let me tell you about some rules the law puts in place for your convenience and protection.

“The lawyers in this case, the defendant[s], or their representatives may now talk to you about the case, including your deliberations or verdict. Those discussions must occur at a reasonable time and place and with your consent.

“Please tell me immediately if anyone unreasonably contacts you without your consent.

“Anyone who violates these rules is violating a court order and may be fined.

“I order that the court’s record of personal juror identifying information, including names, addresses, and telephone numbers, be sealed until further order of this court.

“If, in the future, the court is asked to decide whether this information will be released, notice will be sent to any juror whose information is involved. You may oppose the release of this information and ask that any hearing on the release be closed to the public. The court will decide whether and under what conditions any information may be disclosed.

“Again, thank you for your service. You are now excused.”

judgment from improper influences.’” (*People v. Hernandez, supra*, 163 Cal.App.3d at p. 657, quoting *People v. Thornton, supra*, 155 Cal.App.3d at p. 856.) Because the jury below was not discharged and because the court did not lose control over the jury, *People v. Grider* (1966) 246 Cal.App.2d 149 and *People v. Lee Yune Chong* (1892) 94 Cal. 379 do not support defendant’s position on appeal. We are simply not persuaded by defendant’s assertions that the jury below was “effectively” discharged.

Significantly, too, the trial court in no way prompted reconsideration of the verdict forms. Rather, the court accepted the verdicts as provided from the jury foreperson and the clerk read the verdicts into the record. The court asked if either counsel wished the jury be polled regarding its verdicts and both declined. It was then the jurors interrupted the court to advise the verdicts as read on counts 4 and 5 did not accurately reflect their true verdicts.

Furthermore, section 1161 was not offended by the trial court’s actions here. That section provides, in pertinent part:

“When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if after the reconsideration, they return the same verdict, it must be entered; *but when there is a verdict of acquittal, the court cannot require the jury to reconsider it.*” (Italics added.)

The court did not require the jury to reconsider their verdicts of acquittal. In fact, the court was clearly prepared to accept the verdicts and had begun to read the concluding instruction thanking the jurors for their service. It was the jurors’ comments that prompted review of the verdict forms, to wit: “I think the wrong form was filled for the last two,” “Yeah, the last two,” “We all agree the last two were—” “We filled out the last two, or I did,” and “The last two were supposed to be found guilty.” Once the court was so advised, it asked the jury to return to the deliberation room and maintained possession of the verdict forms, before advising counsel that it would be researching the issue of its authority to act further.

“The concern of [section 1161] is with a trial court’s initiation of jury reconsideration of their verdict on its own accord. [Citation.] In the case before us, the reconsideration of the verdict was clearly initiated by the jury itself. Thus this is not the case ... of a trial court refusing to accept a particular verdict and ordering the jury to reconsider their decision.’ [Citation.]” (*People v. Blair* (1987) 191 Cal.App.3d 832, 840-841.)

The Legislature’s concern was not realized in this case, and the jury’s decision did not change. It is clear from the record that the jury’s decision was, at all times, to render verdicts of not guilty as to counts 1, 2 and 3, and to find defendant guilty of counts 4 and 5. Nothing the court said or did can be interpreted to prompt the jury to change its verdict; it did not initiate the jury’s reconsideration of its verdict. The jury itself did so. Defendant is entitled to a unanimous verdict, and he received a unanimous verdict after the jury had its opportunity to reconvene, and not before. (*People v. Hernandez, supra*, 163 Cal.App.3d at p. 658, citing *People v. Crawford* (1953) 115 Cal.App.2d 838, 842.)

This matter is unlike the situation in *People v. Carbajal* (2013) 56 Cal.4th 521. There, our Supreme Court summarized the “detail[ed] ... procedures that trial courts must follow in receiving a jury verdict.” (*Id.* at p. 530.) Specifically, section 1147 provides that “[w]hen the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge.” Section 1149 provides that “[w]hen the jury appear[s] they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.” And section 1161 specifies that “when there is a verdict of acquittal, the court cannot require the jury to reconsider it,” while in contrast, “[w]hen there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered.”

Section 1163, however, provides that even as to apparent acquittals, “[w]hen a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.” And

section 1164, subdivision (a) similarly provides that “[w]hen the verdict given is receivable by the court, the clerk shall record it in full upon the minutes, and if requested by any party shall read it to the jury, and inquire of them whether it is their verdict. If any juror disagrees, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete”

As *Carbajal* explained,

“These provisions are intended to reduce the likelihood of a trial court unduly, even if inadvertently, influencing the jury to reach a particular outcome. [Citations.] The mechanical, prescriptive character of the process for eliciting and receiving a jury verdict reflects the Legislature’s judgment that the risk of jury coercion outweighs the risk of jury error. The procedural requirements set forth in the statutory scheme apply regardless of whether a reviewing court can discern that there was no *actual* coercion of the jury by the trial court.” (*People v. Carbajal, supra*, 56 Cal.4th at p. 531.)

Additionally, while *Carbajal* explained “there is case law permitting a trial court to clarify an ‘ambiguous’ verdict,” such clarification is limited to instances where the verdict is “unintelligible”; for example, where the jury finds the defendant both guilty and not guilty “on the same count.” (*People v. Carbajal, supra*, 56 Cal.4th at p. 532, italics omitted.) Thus, the trial court “may seek clarification where a jury finds the defendant guilty of a greater offense but not guilty of a lesser included offense” because in such circumstances “it [i]s not possible to understand whether the jury had actually convicted or acquitted the defendant of the specified counts.” (*Ibid.*) But other instances of “[m]ere inconsistency” or ambiguity in a verdict “do[] not provide a valid reason for courts to reject a jury verdict.” (*Ibid.*)

The trial court here was not faced with a mere inconsistency or ambiguity in the verdict. Rather, it was faced with a jury that advised it as expediently as possible given the circumstances that the verdicts read into the record were not the verdicts they had reached following deliberations. In the absence of any request that the jury be polled, there is no other mechanism by which jurors could advise the court accordingly. The fact the jury was not polled should not foreclose the jury’s ability to advise the court the

verdicts as read could not be acknowledged by the jury as its true verdicts. The situation here is sufficiently similar to one wherein a juror dissents during polling, because more than one juror advised the court, at the earliest opportunity and prior to discharge, that their true verdict was not reflected on the forms returned. (*People v. Green, supra*, 31 Cal.App.4th at p. 1010.)

Because we find the trial court did not err, we need not address defendant's double jeopardy argument.

In sum, the trial court did not abuse its discretion by allowing the jurors to return to the deliberation room and review the verdict forms in light of their interruption that two of those verdicts as read did not accurately reflect their true verdicts. This is so because the verdicts were not yet complete and the jury had not yet been discharged.

DISPOSITION

The judgment is affirmed.

PEÑA, J.

WE CONCUR:

CORNELL, Acting P.J.

GOMES, J.