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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ALFONZO LANDA, Defendant and Appellant.	B230530 (Los Angeles County Super. Ct. No. LA063294)

APPEAL from a judgment of the Superior Court of Los Angeles County. Susan M. Speer, Judge. Affirmed.

Sylvia Koryn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Marc A. Kohm and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Alfonzo Landa appeals his conviction for attempted carjacking (Pen. Code,[1] §§ 664, 215, subd. (a)), with a true finding on a gang enhancement allegation (§ 186.22, subd. (b)(1)). Landa raises the following arguments on appeal: (1) the trial court committed prejudicial error in failing to instruct the jury on voluntary intoxication with CALCRIM No. 3426; (2) the evidence was insufficient to support the jury's true finding that the crime was committed for the benefit of, at the direction of, or in association with a gang; and (3) the abstract of judgment does not accurately reflect the trial court's oral pronouncement of a concurrent sentence as to charges to which Landa pleaded no contest. We conclude the abstract of judgment must be corrected to conform to the trial court's oral pronouncement of sentence, and affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Charges

In an amended information, the Los Angeles County District Attorney charged Landa with one count of murder (§ 187, subd. (a)), count 1, six counts of attempted willful, deliberate, and premeditated murder (§§ 664, 187, subd. (a)), counts 2 through 7, one count of attempted carjacking (§§ 664, 215, subd. (a)), count 8, and one count of conspiracy to commit murder (§ 182, subd. (a)(1)), count 9. As to all counts, it was alleged that a principal personally and intentionally discharged a shotgun proximately causing death or great bodily injury (§ 12022.53, subds. (b), (c), (d), (e)), and that the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang, and with the specific intent to promote, further, or assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)). It was further alleged that Landa had suffered two prior juvenile adjudications for a serious or violent felony (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Landa pleaded not guilty to each count and denied the sentence enhancement allegations.

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

II. The Prosecution's Case

A. The Shooting

Paula Barboza lived on Blythe Street and was an acquaintance of Landa. Both Landa and Barboza's brother were members of the Blythe Street gang. On the evening of September 26, 2009, Landa and another Blythe Street gang member, Ricardo Hernandez, were hanging out at Barboza's home. They were both drinking and Landa appeared to be drunk. At approximately 10:00 p.m., Landa and Hernandez left for Van Nuys and were angry when they left. They returned a few hours later looking nervous.

Marlene Ramirez and Frank Garcia were the parents of four-month-old Andrew Garcia.[2] On the evening of September 26, 2009, Marlene, Frank, and Andrew attended a baptism celebration at a banquet hall. Around midnight, they left the hall and drove a friend, Ana Contreras, to her home on Kittridge Street in Van Nuys. After parking on the street, Marlene, Ana, and Andrew remained inside the car. Marlene was in the driver's seat and Ana was in the front passenger seat holding Andrew. Frank stood outside the car and was speaking with three male friends - Melvin Caravantes, Jovahny Reyes, and Eric Ramirez. Eric was a member of the Barrios Van Nuys gang.

Landa and Hernandez approached Marlene's car on foot from across the street. Upon noticing the two men, Eric began walking in front of Marlene's car toward them. One of the men asked Eric, "where are you from," and then fired four to six shots in Eric's direction. As Eric ran from the gunfire, he was shot multiple times in his back. As Ana sat inside the car holding Andrew, she was shot in her left eye and was struck by shotgun pellets in her head, chest, and arm. Andrew sustained 32 wounds to his head and body from shotgun pellets and subsequently died from his injuries. Both Eric and Ana survived the shooting.

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[2] Several of the victims in this case share the same last name. For clarity and convenience, and not out of disrespect, we shall refer to each victim by his or her first name.

B. The Attempted Carjacking

Immediately following the shooting, Landa and Hernandez ran from the scene toward Vanowen Street. As they fled, a neighborhood resident saw one of them holding a gun and heard the other repeatedly yell at his companion to run. Another resident chased the two men down the street, but could not reach them.

Humberto Salcido was working at an animal care facility on Vanowen Street on the night of the shooting. After completing his shift, Salcido got into his car in the facility's parking lot and was waiting for the gate to open so that he could leave. As the gate opened, Salcido was approached by Landa and Hernandez. While Landa stood by the front passenger side of the car, Hernandez walked to the driver's side and asked Salcido if he would give him a ride because someone was shooting at him. When Salcido refused, Landa reached his arm into the car through a slight opening in the front passenger window and attempted to open the door from the inside. Landa then pulled his arms out, grabbed the window with both hands, and tried to force the window open. Salcido rolled up the window and drove away. After driving around the building, Salcido returned to his workplace and called the police.

C. The Police Investigation

At the scene of the shooting, the police recovered six Remington shotgun casings from Kittridge Street. The police later recovered a 12-gauge Mossberg shotgun and a single Remington shotgun round from a crawl space underneath an apartment complex on Blythe Street. The casings recovered from the crime scene were determined to have been fired from the shotgun. Two days after the shooting, Salcido's car was examined for forensic evidence. Finger and palm prints lifted from the front passenger window of the car matched those belonging to Landa.

On October 8, 2009, Landa was arrested and interviewed by the police. A videotaped recording of the interview was played at trial. During the interview, Landa admitted that he was a Blythe Street gang member with the moniker "Shysty," but initially denied that he knew Hernandez or had any involvement in the shooting. Landa later admitted to the police that he was with Hernandez when the shooting occurred, but

denied having any prior knowledge that Hernandez was armed with a shotgun or intended to shoot anyone.

Landa told the police that he and Hernandez were dropped off in Van Nuys by an acquaintance in a black car. When they exited the car, Landa saw for the first time that Hernandez was holding a Mossberg shotgun at his side. Landa and Hernandez walked for about two minutes before they saw a group of people standing across the street. Hernandez said to Landa, "look, they're right there." Hernandez then asked the group, "where you fools from," and one of them answered "Barrio Van Nuys." At that point, Hernandez unexpectedly began shooting at the group, and Landa heard a total of four shots. Immediately after the shooting, Landa and Hernandez ran from the scene. Landa probably touched Salcido's car as he was running away, but he could not remember because he was drunk. He asked several people for a ride at that time and a woman in a white car finally agreed. Landa and Hernandez returned to the home of two girls that they had been hanging out with earlier that evening where they continued drinking.

D. The Gang Evidence

Los Angeles Police Officer Bradley Schumacher testified as a gang expert for the prosecution. He had been assigned to the Van Nuys area gang enforcement detail for one and a half years where he was primarily responsible for monitoring two rival gangs, the Blythe Street gang and the Barrios Van Nuys gang. His job duties included investigating gang crimes and gathering gang intelligence in the field by engaging in daily consensual encounters with gang members. According to Officer Schumacher, gang members enhanced their reputation and elevated their status within a gang by "putting in work," which involved committing crimes such as robberies, burglaries, and shootings on behalf of the gang. Gang members also elevated their status and intimidated their rivals by going on "missions," which consisted of two or more gang members committing a crime together within a rival gang's claimed territory. Multiple gang members were required for missions to provide protection from their rivals as well as to confirm for their gang when a mission was completed. The shooting in this case occurred in the heart of the territory claimed by the Barrios Van Nuys gang.

The Blythe Street gang had approximately 260 members. The gang associated itself with the letters "BST" and "PC" and its members commonly wore sports attire with the letter "B." The primary activities of the gang included robberies, burglaries, automobile thefts, assaults with deadly weapons, and illegal weapons possession. Crimes committed by members of the Blythe Street gang included an attempted murder in October 2006 and possession of a loaded firearm in June 2008. Hernandez and Landa were both members of the Blythe Street Gang, and Eric Ramirez was a member of the rival Barrios Van Nuys gang. Officer Schumacher based his opinion about Landa's gang affiliation on Landa's prior admissions to gang officers, his association with other gang members, and his gang tattoos.[3]

When presented with a hypothetical based on the facts of the case, Officer Schumacher opined that the crimes were committed for the benefit of the Blythe Street gang. Officer Schumacher stated that the crimes would benefit the gang by elevating the status of the individual gang member within the gang and the status of the gang within the community. Although the killing of a baby would not benefit the gang, the targeted shooting of a rival gang member would do so by bringing respect and prestige to the gang members who perpetrated the crime. Status and respect were important to gangs and gang members, and a well-respected gang could instill fear in both rival gangs and the surrounding community.

III. The Defense Case

On the night of the shooting, Carlos Garcia was a passenger in a car driven by Fernando Navarette. Navarette agreed to give Landa and another person whom Garcia did not know a ride from Blythe Street to Van Nuys Boulevard. While they were in the car, Garcia did not see any weapons or hear any conversations about anyone having a weapon or committing a crime. Landa told Navarette to drop him and his friend off on a

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[3] On two occasions in June 2008, Landa admitted to a gang officer that he was a member of the Blythe Street gang and that he went by the moniker "Harms" and later "Shysty."

small residential street near Van Nuys Boulevard. Garcia did not see Landa or his friend again after they got out of the car.

Landa testified on his own behalf. He was 14 years old when he joined the Blythe Street gang and was 17 years old when the shooting in this case occurred. About a month before the shooting, Landa learned from his fellow gang member, Hernandez, that Hernandez had been wounded in a shooting by members of the Barrios Van Nuys gang. In the past, another fellow gang member also had been shot and killed by the Barrios Van Nuys gang in Landa's presence. Landa considered the Barrios Van Nuys gang to be his enemy.

On the night of September 26, 2009, Landa was drinking with Hernandez in a driveway near Barboza's home on Blythe Street. Landa drank beer and half a bottle of vodka. At some point, Landa and Hernandez decided to go to Hernandez's home in Van Nuys. They initially intended to walk, but were able to get a ride from Navarette, a fellow Blythe Street gang member, and Garcia. Landa sat in the right rear passenger seat of the car and Hernandez sat next to him. After about 10 minutes, Landa and Hernandez were dropped off on the corner of Van Nuys Boulevard in the Barrios Van Nuys gang's territory. Landa first noticed that Hernandez had a Mossberg shotgun when Hernandez stepped out of the car, but Landa did not ask Hernandez any questions about the weapon. After walking for two blocks with the shotgun at his side, Hernandez confronted someone on the street and then fired the gun at a crowd. Hernandez never told Landa that he intended to confront or shoot anyone. As soon as Landa heard the shots, he ran to get away. Landa was drunk at the time of the shooting, but "snapped into sense" after the first shot.

During the initial part of his interview with the police, Landa was not completely truthful because he feared he would be charged with murder. He lied when told the police that he did not know Hernandez and that he was not with Hernandez on the night of the shooting. However, Landa testified that he was honest when he told the police that he was not sent on a mission by his gang to commit a shooting, and that he did not know Hernandez intended to fire the gun until he heard the first shots. Landa also testified that

he was honest when he said that he did not remember touching Salcido's car as he was running away. On the other hand, Landa admitted in cross-examination that he reached his arm inside Salcido's car to try to unlock the door, leaving his prints on the inside part of the car window.

IV. Verdict and Sentencing

At the conclusion of the trial, the jury found Landa guilty of one count of attempted carjacking, with a true finding on the gang enhancement alleged as to that count. The jury deadlocked on the eight remaining counts and a mistrial was declared as to each of those counts. Following the jury's verdict, Landa admitted the two prior strike allegations. As to the attempted carjacking count, the trial court sentenced Landa to a term of 25 years to life based on his two prior strikes, plus a consecutive term of five years based on the gang enhancement.

The prosecution filed a second amended information charging Landa with the counts on which the jury deadlocked. Landa subsequently withdrew his plea of not guilty to the second amended information and pleaded no contest to three counts of attempted murder and to one additional count of voluntary manslaughter. As part of the plea, Landa admitted the gang enhancement alleged as to the voluntary manslaughter count, and admitted one of the two prior strike allegations. The prosecution dismissed the remaining counts and allegations pursuant to section 1385. As to the attempted murder and voluntary manslaughter counts, the trial court sentenced Landa to a total term of 30 years in state prison to run concurrently with the sentence on the attempted carjacking count. Landa filed a timely notice of appeal.

DISCUSSION

I. Alleged Instructional Error on Voluntary Intoxication

Landa contends that the trial court committed prejudicial error in instructing the jury on voluntary intoxication as applied to the attempted carjacking count. In particular, Landa claims that the trial court erred in failing to instruct the jury with CALCRIM No. 3426 that it could consider evidence of voluntary intoxication in deciding whether Landa

had the specific intent or mental state required to commit an attempted carjacking as either a direct perpetrator or an aider and abettor. Based on the record before us, we conclude that there was no prejudicial instructional error.

A. Jury Instructions on Voluntary Intoxication

The trial court issued two instructions to the jury on voluntary intoxication. With a modified version of CALCRIM No. 404, the trial court instructed the jury as follows: "If you conclude that the defendant was intoxicated at the time of the alleged crime, you may consider this evidence in deciding whether the defendant: [¶] A. Knew that Ricardo Hernandez intended to commit murder; [¶] AND [¶] B. Intended to aid and abet Ricardo Hernandez in committing murder. [¶] Someone is intoxicated if he or she took or used any drug, drink, or other substance that caused an intoxicating effect." The written version of the instruction provided to the jury included the following heading: "CALCRIM 404. Intoxication."

With a modified version of CALCRIM No. 625, the trial court also instructed the jury as follows: "You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant acted with an intent to kill, or the defendant acted with deliberation and premeditation when he acted, or whether defendant intended to deprive Humberto Salcido of his vehicle either temporarily or permanently at the time he used force and fear in the alleged attempted carjacking. [¶] A person is voluntarily intoxicated if he or she becomes intoxicated by willingly using any intoxicating drug, drink, or other substance knowing that it could produce an intoxicating effect, or willingly assuming the risk of that effect." The written version of the instruction given to the jury included the following heading: "CALCRIM 625. Voluntary Intoxication: Effects On Homicide Crimes (Pen. Code, § 22)."

On appeal, Landa asserts that the trial court should have further instructed the jury on voluntary intoxication with the following version of CALCRIM No. 3426: "You may consider evidence, if any, of the defendant's voluntary intoxication only in a limited way. You may consider that evidence only in deciding whether the defendant used force or

fear to take the vehicle or to prevent from that person from resisting and when the defendant used force or fear to take the vehicle, he intended to deprive the person of possession of the vehicle either temporarily or permanently. . . . If the People have not met that burden, you must find the defendant not guilty of attempted carjacking. [¶] In connection with the aiding and abetting theory of culpability, the People have the burden of proving beyond a reasonable doubt that the defendant had knowledge of the intent of the principal(s) to permanently take the vehicle or to prevent that person from resisting and when the defendant used force or fear to take the vehicle or permanently and intended by his or her actions to commit, encourage or facilitate the principal(s)' purpose. If the People have not met that burden, you must find the defendant not guilty under an aiding and abetting theory." At trial, Landa did not request that CALCRIM No. 3426 be included in the instructions to the jury, nor did he raise any objection to the voluntary intoxication instructions that were given.

B. Applicable Law

In a criminal case, a trial court must instruct the jury on general principles of law relevant to the issues raised by the evidence even in the absence of a request for such instruction. (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) In contrast, a defendant is entitled to an instruction that pinpoints his or her theory of the case only upon request. (*People v. Ledesma* (2006) 39 Cal.4th 641, 720; *People v. Saille* (1991) 54 Cal.3d 1103, 1119.) "[A]n instruction on voluntary intoxication, explaining how evidence of a defendant's voluntary intoxication affects the determination whether defendant had the mental states required for the offenses charged, is a form of pinpoint instruction that the trial court is not required to give in the absence of a request. [Citation.]" (*People v. Bolden* (2002) 29 Cal.4th 515, 559; see also *People v. Verdugo* (2010) 50 Cal.4th 263, 295 ["It is well settled that '[a]n instruction on the significance of voluntary intoxication is a "pinpoint" instruction that the trial court is not required to give unless requested by the defendant.'"].) Additionally, "[a] defendant is entitled to such an instruction only when there is substantial evidence of the defendant's voluntary intoxication and the

intoxication affected the defendant's 'actual formation of specific intent.' [Citations.]" (*People v. Williams* (1997) 16 Cal.4th 635, 677.)

As a preliminary matter, the Attorney General argues that Landa has forfeited his claim of instructional error on appeal by failing to object to the voluntary intoxication instructions that were given or to request a clarifying or amplifying instruction in the trial court. However, as our Supreme Court has recognized, "[a]lthough a trial court has no sua sponte duty to give a 'pinpoint' instruction on the relevance of evidence of voluntary intoxication, 'when it does choose to instruct, it must do so correctly.'" (*People v. Pearson* (2012) 53 Cal.4th 306, 325, citing *People v. Castillo* (1997) 16 Cal.4th 1009, 1015.) In this case, because the trial court chose to instruct the jury on voluntary intoxication with modified versions of CALCRIM Nos. 404 and 625, Landa has not forfeited his challenge to the adequacy of such instructions on appeal.

The applicable legal standards are settled. Where, as here, a defendant claims that instructional error precluded the jury from properly considering evidence of his or her voluntary intoxication, "[t]he appellate court should review the instructions as a whole to determine whether it is 'reasonably likely the jury misconstrued the instructions as precluding it from considering' the intoxication evidence . . . . [Citation.]" (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1134.) Any error in instructing the jury on voluntary intoxication "would have the effect of excluding defense evidence and is thus subject to the usual standard for state law error: 'the court must reverse only if it also finds a reasonable probability the error affected the verdict adversely to defendant.' [Citation.]" (*Id*. at pp. 1134-1135; see also *People v. Pearson, supra,* 53 Cal.4th at p. 325 [appellate courts "apply the 'reasonable probability' test of prejudice to the [trial] court's failure to give a legally correct pinpoint instruction" on voluntary intoxication].)[4]

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[4] Contrary to Landa's contention, the alleged instructional error at issue would not have effect of reducing the prosecution's burden of proof such that Landa's conviction must be reversed unless the error was harmless beyond a reasonable doubt. (*People v. Pearson, supra*, 53 Cal.4th at p. 325, fn. 9 ["The failure to give a fully inclusive pinpoint instruction on voluntary intoxication did not . . . deprive [defendant] of his federal fair

C. No Prejudicial Instructional Error

Landa reasons that the trial court was required to instruct the jury with CALCRIM No. 3426 because the versions of CALCRIM Nos. 404 and 625 that were given failed to adequately address the applicability of voluntary intoxication to the attempted carjacking count. As discussed, CALCRIM No. 404 instructed the jury that it could consider evidence of voluntary intoxication in determining whether Landa had the mental state required to aid and abet the commission of a murder, but did not make any reference to the crime of attempted carjacking. CALCRIM No. 625 did include attempted carjacking as one of the crimes for which the jury could consider evidence of voluntary intoxication in determining whether Landa harbored the requisite specific intent, but the heading erroneously referred to the instruction as applying only to "homicide crimes." We need not decide, however, whether the trial court's instructions on voluntary intoxication were misleading or inadequate because even if we assume that there was instructional error, it is not reasonably probable that different instructions would have resulted in a verdict more favorable to Landa.

At trial, Landa's sole defense to the attempted carjacking count was that he was too drunk to have formed the specific intent required to commit the crime. In support of this defense, Landa testified that, on the night of the shooting, he became intoxicated after consuming beer and half a bottle of vodka. Barboza also confirmed that Landa was drinking at her home prior to the shooting and appeared drunk when he left for Van Nuys. However, there was compelling evidence that Landa's intoxication did not appreciably affect his mental state in the commission of the crime. Indeed, the evidence at trial overwhelmingly supported a finding that Landa was in command of his senses at the time he tried to force his way into Salcido's car.

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trial right or unconstitutionally lessen the prosecution's burden of proof.") Rather, if instructional error is shown, reversal is required only if it is reasonably probable that the jury would have reached a result more favorable to Landa absent the error.

Although Landa testified that he had no memory of his encounter with Salcido, he gave a detailed account of the events surrounding the shooting. (See *People v. Ramirez* (1990) 50 Cal.3d 1158, 1181 [no substantial evidence supporting voluntary intoxication instruction where "[d]efendant purported to give a detailed account of all of the events of the night in question"]; *People v. Ivans* (1992) 2 Cal.App.4th 1654, 1662 [where defendant "gave detailed testimony about the events that morning, . . . [the] evidence was insufficient to show that [defendant's] drug use had affected his mental state"].) In both his statement to the police and his testimony at trial, Landa was able to recall getting into the right rear passenger seat of Navarette's car, travelling in the car for five to 10 minutes, being dropped of on the corner of Van Nuys Boulevard in the rival Barrios Van Nuys gang's territory, and walking with Hernandez for two blocks while Hernandez held a Mossberg shotgun at his side. Landa also was able to recall Hernandez telling him "they're right there" as they approached a group of people standing across the street, Hernandez asking the group "where you fools from," and Hernandez firing his shotgun at the group when one of them answered "Barrio Van Nuys." Additionally, Landa testified that he was not too drunk to remember the details of the shooting because he "snapped into sense" after the first shot was fired. Accordingly, by his own admission, Landa had command of his senses when he fled the scene of the shooting and then tried to forcibly take Salcido's car in an effort to escape.

Landa claims that the jury's failure to reach a unanimous verdict on the murder and attempted murder counts for which a voluntary intoxication instruction was properly given is sufficient to show prejudice. We disagree. The jury's questions to the trial court demonstrate that the jury was deadlocked on the knowledge element required to convict Landa as an aider and abettor in the shooting. In particular, the record reflects that two jurors did not believe the prosecution had proven beyond a reasonable doubt that Landa had knowledge of Hernandez's intent to commit a murder until the first shot was fired. However, the attempted carjacking count against Landa was not based on a theory of aiding and abetting liability since it was Landa, not Hernandez, who attempted to force his way into Salcido's car. In fact, during closing argument, defense counsel admitted

that Landa "was trying to get in the car," but asserted that his client was too intoxicated at the time to form the specific intent required to commit a carjacking. While the prosecution argued in its closing that Landa's intoxication defense was not credible, it never suggested that the jury was precluded from considering intoxication in deciding the attempted carjacking count. Therefore, viewing the instructions as a whole, the argument of counsel, and the evidence presented at trial, we are convinced that any error committed by the trial court in instructing the jury on voluntary intoxication was not prejudicial.

II. Sufficiency of the Evidence on the Gang Enhancement

On appeal, Landa also challenges the sufficiency of the evidence supporting the jury's true finding on the gang enhancement alleged as to the attempted carjacking count. He specifically contends that the evidence was insufficient to support the finding that he committed the crime for the benefit of a gang. Landa reasons that, apart from his status as a gang member, the only evidence offered to establish that the attempted carjacking was gang-related was the testimony of Officer Schumacher, which was speculative and without evidentiary support. Considering the totality of the evidence at trial, however, we conclude that the gang enhancement was supported by substantial evidence.

"In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence – that is, evidence that is reasonable, credible, and of solid value – from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 59-60.)

To obtain a true finding on an allegation of a gang enhancement, the prosecution must prove that the crime at issue was "committed for the benefit of, at the direction of,

or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . ." (§ 186.22, subd. (b)(1).) "It is well settled that expert testimony about gang culture and habits is the type of evidence a jury may rely on to reach . . . a finding on a gang allegation. [Citation.]" (*People v. Ferraez* (2003) 112 Cal.App.4th 925, 930.) In addition, a gang expert generally is allowed to provide opinion testimony about the motive for a crime on the basis of facts presented in hypothetical questions that ask the expert to assume their truth. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 946-947; *People v. Gardeley* (1996) 14 Cal.4th 605, 618.) While a gang expert may not ordinarily testify whether the defendant in particular committed the crime for the benefit of a gang, the expert "properly could . . . express an opinion, based on hypothetical questions that tracked the evidence, whether the [crime], if the jury found it in fact occurred, would have been for a gang purpose." (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.) Indeed, "'[e]xpert opinion that particular criminal conduct benefited a gang' is not only permissible but can be sufficient to support the . . . section 186.22, subdivision (b)(1), gang enhancement. [Citation.]" (*Ibid.*)

In this case, there was substantial evidence connecting Landa's attempted carjacking to his gang. The evidence at trial established that Landa attempted to commit the carjacking with a fellow gang member in a rival gang's territory as they were fleeing a gang-related shooting. The shooting itself was gang-motivated. Landa and Hernandez, who were both self-admitted active members of the Blythe Street gang, went into the heart of the territory claimed by their bitter rival, the Barrios Van Nuys gang. Hernandez issued a classic gang challenge to a group of men on the street when he asked them "where you from," and then opened fire on the group when one of them answered "Barrio Van Nuys." Immediately after the shooting, Landa and Hernandez attempted to carjack Salcido in an effort to escape from the area. Given that the attempted carjacking was committed by two gang members in a rival gang's territory during their flight from a gang-related shooting, the jury reasonably could have found that the carjacking attempt was for the benefit of a gang. (See *People v. Leon* (2008) 161 Cal.App.4th 149, 163 [sufficient evidence supported gang enhancement where defendant "in association

with . . . a fellow gang member . . . committed the crimes in a rival gang's territory"]; *People v. Romero* (2006) 140 Cal.App.4th 15, 19 [sufficient evidence supported gang enhancement where three gang members acting in concert committed a shooting in a rival gang's territory].)

Landa argues that the evidence merely established that he attempted the carjacking for his own personal benefit to aid in his escape, not for the benefit of his gang. However, based on a hypothetical drawn from the details of the crime, the prosecution's gang expert testified that the attempted carjacking would have benefited both the Blythe Street gang as a whole and the individual perpetrators as members of that gang. Officer Schumacher explained that gangs enhanced their reputations by sending their members on "missions," which involved two or more gang members committing a crime in a rival gang's territory. The crimes in this case would benefit the Blythe Street gang because it would instill fear in rival gangs and community residents. The crimes also would benefit Landa and Hernandez as individual gang members because it would elevate their status within the gang. However, any personal benefit that Landa may have derived from the attempted carjacking did not negate the broader benefit to his gang. Indeed, Officer Schumacher's testimony reflected that a gang's reputation was tied to the reputation of its members, and thus, a crime that enhanced a member's status within the gang also could enhance the gang's status within the surrounding community. (*People v. Albillar*, *supra*, 51 Cal.4th at p. 63 ["[e]xpert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a[ ] criminal street gang'"]; *People v. Gardeley*, *supra*, 14 Cal.4th at p. 619 [based on expert testimony that a gang relied on violent assaults to frighten residents, "the jury could reasonably conclude that the attack on [the victim] . . . was committed 'for the benefit of, at the direction of, or in association with' that gang"].)

Landa asserts that Officer Schumacher's opinion was based solely on speculation, not on evidence. We disagree. The record reflects that Officer Schumacher offered his expert opinion that the attempted carjacking was gang-related in response to hypothetical

questions posed by the prosecution that were based on the evidence presented at trial. As explained, the prosecution presented evidence that Landa attempted the carjacking with a fellow member of the Blythe Street gang, that the crime occurred in an area controlled by the rival Barrios Van Nuys gang, and that the crime was committed immediately after the shooting of a Barrios Van Nuys gang member as Landa was attempting to flee the area. Officer Schumacher's testimony that gang members could enhance their gang's reputation by committing crimes together in a rival gang's territory was admissible to assist the jury in connecting both the shooting and the attempted carjacking to Landa's gang. Because Officer Schumacher's testimony was properly rooted in evidence presented at trial, it was not impermissibly speculative.

Landa also claims that the evidence was insufficient to show that the attempted carjacking was committed for the benefit of his gang because there was no indicia of gang involvement in the crime itself. Landa points out that there was no evidence that, during his exchange with Salcido, Landa called out any gang names, displayed any gang signs, wore any gang attire, or depicted any gang graffiti. He also notes that there was no evidence that Salcido was a suspected member of a rival gang. However, as discussed, there was ample evidence that the attempted carjacking was committed in the immediate aftermath of a indisputably gang-motivated shooting as part of an effort to escape from the scene of that crime. For these reasons, the cases on which Landa relies, including *People v. Ochoa* (2009) 179 Cal.App.4th 650, *People v. Ramon* (2009) 175 Cal.App.4th 843, *People v. Albarran* (2007) 149 Cal.App.4th 214, and *In re Frank S.* (2006) 141 Cal.App.4th 1192, do not support a reversal of the gang enhancement in this case. None of those prior decisions included the specific factual scenario present here – two gang members acted together to attempt a carjacking to aid in their escape from the shooting of a rival gang member in the rival gang's territory.

Under these circumstances, the jury reasonably could have found that the attempted carjacking was part of a course of gang-related criminal conduct that began with the shooting of the rival gang member on behalf of Landa's gang. Consequently,

the evidence was sufficient to support the jury's true finding on the gang enhancement alleged as to the attempted carjacking count.

III. Sentencing Error

Landa contends, and the Attorney General concedes, that the abstract of judgment must be modified because it does not accurately reflect the trial court's oral pronouncement of his sentence. We agree. (*People v. Myles* (2012) 53 Cal.4th 1181, 1222, fn. 14 ["When an abstract of judgment does not accurately reflect the trial judge's oral pronouncement of sentence, [the appellate] court has the inherent power to correct such an error, either on [its] own motion or at the parties' behest."].)

At the sentencing hearing, the trial court sentenced Landa to a total term of 30 years to life in state prison on the attempted carjacking count (count 8), consisting of 25 years to life on the underlying conviction plus five years on the gang enhancement. Pursuant to a plea agreement, the trial court further sentenced Landa to a total term of 30 years in state prison, consisting of 6 years on one count of voluntary manslaughter (count 10), an additional 10 years on a gang enhancement alleged as to the voluntary manslaughter count, and consecutive terms of four years, eight months on each of three counts of attempted murder (counts 2 through 4). In orally pronouncing the sentence, the trial court ordered that "all of these counts and allegations will run concurrent to the sentence that the court imposed under count [8] for a total of 30-years-to-life." The abstract of judgment, however, fails to reflect that the sentence imposed on the voluntary manslaughter count and on each attempted murder count is to run concurrently with the sentence imposed on the attempted carjacking count. The abstract of judgment must be modified accordingly.

DISPOSITION

The abstract of judgment is modified to reflect that the sentences imposed on counts 2 through 4 and count 10 are to run concurrently with the sentence imposed on count 8. The superior court is directed to prepare a corrected abstract of judgment and

to forward it to the Department of Corrections and Rehabilitation. The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.