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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 EIGHT

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>ALEXIS TELLES,<br><br>Defendant and Appellant. | B269549<br><br>(Los Angeles County Super. Ct. No. LA079617) |

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

Patricia Jean Ulibarri, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Alexis Telles was convicted of two counts of kidnapping for robbery and six counts of robbery arising from two separate incidents on public streets. Gang and firearm enhancement allegations were also found to be true. On appeal, defendant challenges: (1) the sufficiency of the evidence of the asportation element of kidnapping for robbery; (2) the purported vagueness of the kidnapping for robbery statute; (3) the sufficiency of the evidence that his gang constituted a criminal street gang within the meaning of the gang enhancement statute; and (4) an error in his abstract of judgment. We direct the trial court to modify defendant's abstract of judgment to conform to the sentence imposed by the trial court, and otherwise affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *The Rodriguez Kidnapping and Robbery*

Just after midnight on October 12, 2014, defendant and a female accomplice robbed Juan and Roman Rodriguez.[1]

Juan and Roman were walking on the sidewalk near Roman's apartment; they planned to go to the back of the apartment complex to smoke marijuana. Defendant was driving a gray Nissan Sentra on the street in the same direction in which Juan and Roman were walking, on the opposite side of the street. Defendant brought the car around in a U-Turn and pulled up beside Juan and Roman. He exited the car and began to ask the men for directions. He then pointed a shotgun at them and told them to " 'take a walk' " with him. Defendant directed the men to leave the sidewalk, and walk down a dark driveway between the two apartment buildings. The sidewalk had been lit by a streetlamp; there was no lighting in the driveway, which, according to Roman, was "way darker." Juan did not want to go into the driveway "because it was away from public view," but complied because defendant had a shotgun.

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[1] The Rodriguez victims were not related to each other; they simply had the same last name. For clarity, we refer to them by their first names.

Defendant asked Juan and Roman where they were from, which they interpreted as a gang challenge. They said they were not from anywhere. After Juan and Roman had walked between 16 and 20 feet into the driveway, defendant ordered them to put their hands on a wall. He then directed them to empty their pockets, and give him their belongings. Juan gave defendant his wallet. Roman gave defendant his wallet and cell phone. Defendant was then joined by a female accomplice, who had been waiting in the car. Defendant told Juan and Roman that his " 'homegirl' " was going to search them, and that if they still had anything on them, he would " 'put a hole in' " them. Juan handed his cell phone to the accomplice. The accomplice frisked the men, discovering and taking Roman's marijuana.

Defendant and his accomplice turned to leave. Roman asked defendant if he could get his I.D. and driver's license back. Defendant agreed and handed them back to Roman. Roman spotted a tattoo on defendant's right forearm, which read, "Trigger."

Juan and Roman reported the crime to police. Defendant was arrested when driving a silver Nissan Sentra. He has a tattoo of "Trigger" on his right forearm. Juan and Roman each identified defendant from a photographic array and at trial.

2. *The Robbery of Arthur Mazloumian and His Friends*

The night after the Rodriguez robbery, around 1:00 a.m., defendant and two accomplices robbed four friends: Arthur Mazloumian, Hayk Khachatryan, and two men identified at trial as Karlen and Arsen.

The four men had been at a family friend's party; they left the party to buy cigarettes. As they were walking down the sidewalk, defendant and his accomplices drove up beside them and stopped near them. Defendant, a male accomplice, and a female accomplice all exited the car. Defendant, who had been driving, had a shotgun. The other two robbers had handguns. Defendant ordered the four men to put their hands on a nearby wall; the victims did. One of the male robbers ordered the victims to empty their pockets; when one of the victims did not

comply, the female robber reached into his pocket. The robbers took Mazloumian's cell phone and his distinctive wallet with a skull logo. They took Khachatryan's black Gucci wallet, his cell phone, and his watch. They took $20 from Arlen, and a cell phone from Karlen.

During the robbery, one of the male robbers stated, " 'You're getting taxed.' " A male robber also said, " 'Sorry, we have to do this, one of our Homies is locked up.' "

After the robbery, the victims returned to the party. Mazloumian's father and brother went out searching for the robbers. Later, Mazloumian called the police.

Only Mazloumian and Khachatryan testified at trial. Although Mazloumian initially identified defendant at trial, he had identified someone else from a photographic array, and ultimately testified that defendant was not the robber. Khachatryan had identified defendant from a photographic array and at the preliminary hearing, but stated at trial that he could not recall whether defendant was the robber. However, when defendant was arrested, ten days after the robbery, he had on his person the wallets belonging to Mazloumian and Khachatryan.

3. *Charges and Trial*

Defendant was charged by information with two counts of kidnapping for robbery (Pen. Code, § 209, subd. (b)(1)) and two counts of robbery (§ 211), arising from the Rodriguez incident.[2] He was charged with four additional counts of robbery arising from the second incident. With respect to each count, it was alleged that defendant committed the crime for the benefit of a criminal street gang (§ 186.22, subd. (b)) and personally used a firearm (§ 12022.53, subd. (b)). Finally, a prior prison term (§ 667.5, subd. (b)) was alleged. Defendant pleaded not guilty and proceeded to trial.

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[2] All undesignated statutory references are to the Penal Code.

4. *Gang Evidence at Trial*

Defendant was virtually covered in tattoos announcing his allegiance to Grumpy Winos, a small gang operating in the territory of the Rodriguez robbery. There was no real dispute that defendant was a member of Grumpy Winos, nor – given the statements made during the robberies – that the robberies were intended to benefit the gang. The dispute at trial, and on appeal, surrounded whether Grumpy Winos qualified as a "criminal street gang" within the meaning of section 186.22.

Los Angeles Police Department Officer Luke Burke testified as a gang expert. He has been assigned to gang enforcement detail for three years. He was specifically assigned to cover five gangs, including Grumpy Winos. While he has had education regarding gangs in general, he also speaks daily with other officers about gang crimes. His specific knowledge of Grumpy Winos comes from personally investigating crimes involving Grumpy Winos and discussions with other officers.

Grumpy Winos was established in the early 1990's. It started out as a tagging crew called "Gone Wicked" or "Gone Wild." The members then started committing more crimes, and "they eventually named themselves the Grumpy Winos as they became a full-fledged gang." At the time of trial, they had 14 documented members, although the number fluctuated. There was some dispute as to when Grumpy Winos became a "full-fledged" gang.[3] Defendant attempted to elicit testimony that the gang was not particularly active until October 2014, which would imply that Grumpy Winos was not a "criminal street gang" until defendant committed these robberies. While there was some testimony to the effect that Grumpy Winos was not very active

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[3] At defendant's preliminary hearing, Officer Burke testified that, in 1996, Grumpy Winos became "validated by the Mexican Mafia." At trial, defendant successfully objected to testimony regarding the Mexican Mafia as unduly prejudicial, which resulted in the 1996 date not being placed before the jury.

prior to October 2014, Officer Burke clarified that the gang had graduated from being a mere tagging crew in the 1990's.

According to Officer Burke, Grumpy Winos' "[p]rimary activities involve narcotics sale, gun possession, robberies [and] burglaries . . . ." Officer Burke has specifically worked on burglaries, assaults with firearms, and firearm possession cases involving Grumpy Winos. Although not primary activities of the gang, Officer Burke has also investigated attempted murders and murders involving Grumpy Winos.

The prosecution introduced evidence that Jose Mendoza, a documented Grumpy Winos member, committed a burglary in May 2014.

In cross-examination, defendant's counsel elicited testimony that the last time a Grumpy Winos member was convicted of committing a murder predated Officer Burke's three-year stint in the gang unit. Officer Burke also explained that the attempted murder he had investigated involved Alex Martinez, a Grumpy Winos member who shot a rival gang member in the leg, in January 2015.

5. *Verdict, Sentence and Appeal*

Defendant was convicted as charged.[4] The trial court sentenced defendant as follows: for the Roman kidnapping, a life term, with a minimum term of 15 years (for the gang enhancement), plus 10 years (for the firearm enhancement). A concurrent term was imposed for the Juan kidnapping. Sentence on both Rodriguez robberies was imposed and stayed under section 654. For the Mazloumian robbery, 5 years in prison, plus 10 years (gang enhancement), plus 10 additional years (firearm enhancement). Concurrent terms were imposed for the robberies of Mazloumian's friends. The prior prison term enhancement was stricken in the interest of justice. In sum, defendant was

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[4] The prior prison term allegation had been bifurcated; defendant admitted it at sentencing. An allegation that defendant committed the crimes when out on bail (§ 12022.1) was dismissed in light of the trial court's indicated sentence.

sentenced to a determinate term of 25 years and an indeterminate term of 15 years to life, plus 10 years. (§ 669.) Defendant filed a timely notice of appeal.

## DISCUSSION

1. *Sufficient Evidence of Asportation*

Defendant's first contention on appeal is that there was insufficient evidence of asportation, an element of the kidnapping charge.

" 'In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.]' [Citation.]" (*People v. James* (2007) 148 Cal.App.4th 446, 452 (*James*).)

Section 209, subdivision (b) prohibits kidnapping for robbery. Subdivision (b)(2) explains that the provision only applies "if the movement of the victim is 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." Thus, two elements must be established: (1) not merely incidental; and (2) increased risk of harm.

As to the first element, whether the movement was not merely incidental to the robbery, the jury must consider the scope and nature of the movement, including the actual distance. However, there is no minimum number of feet necessary for a movement to be not merely incidental. An incidental movement

plays no significant or substantial part in the planned robbery, or is a more or less trivial change of location having no bearing on the evil at hand. (*James, supra,* 148 Cal.App.4th at p. 454.)

The second element is whether the movement increased the risk of harm to the victim. "The statute previously required that the movement *substantially* increase the risk of harm to a victim, but it was amended in 1997 to require only that the movement increase the risk of harm, but not that the increase be substantial. [Citation.]" (*People v. Simmons* (2015) 233 Cal.App.4th 1458, 1472 (*Simmons*).) In determining increased risk of harm, factors to consider include a decreased likelihood of detection, the danger inherent in a victim's foreseeable attempts to escape, and the attacker's opportunity to commit further crimes. (*James, supra,* 148 Cal.App.4th at p. 454.) The fact that the dangers did not materialize does not mean the risk had not been enhanced. (*Ibid.*) "A conviction of kidnapping for robbery requires an increase in the harm to the victim beyond that contained in a hypothetical standstill robbery, where the risk of harm 'arises from the perpetrator's use of force or fear, and from brief movements incidental to the robbery.' [Citation.] 'The essence of aggravated kidnapping is the increase in the risk of harm to the victim caused by the *forced movement*.' [Citation, italics added.]" (*Id.* at p. 455.) It is true that "simply removing someone from public view does not *necessarily* satisfy the requirement that the risk of harm to a victim is increased." (*Simmons,* at p. 1473.) However, it has often been held that "defendants who moved their victims to more secluded or enclosed areas did substantially increase the risk [citations]." (*James,* at p. 455.)

The two asportation elements are related, and each case must be considered in the context of the totality of its circumstances. (*James, supra,* 148 Cal.App.4th at p. 454.)

We consider the evidence of each element. First, the movement was not merely incidental to the robbery. While there was some evidence of a lesser distance, the jury was free to accept Juan and Roman's testimony that they were directed, at

gunpoint, nearly 20 feet down a darkened driveway away from public view. (Exh. 10.) This was not a trivial movement; being moved down the driveway enabled defendant to draw out the duration of the robbery, including the frisk by his accomplice and the threat to shoot the victims if she found anything.

Second, and similarly, the movement increased the risk of harm to the victims. Juan and Roman were under the control of defendant, and under the threat of his shotgun, for a longer period of time than in a hypothetical standstill robbery. There were more opportunities for something to go wrong, and fewer possible witnesses if it did. This constitutes sufficient evidence.

2. *The Aggravated Kidnapping Statute is Not Unconstitutionally Vague*

By supplemental brief, defendant argues that the aggravating kidnapping statute – specifically, the test for asportation – is unconstitutionally vague in light of the recent U.S. Supreme Court case of *Johnson v. United States* (2015) 135 S.Ct. 2551 (*Johnson*). To the contrary, the rationale of *Johnson* itself distinguishes that case from statutes such as section 209, subdivision (b).

At issue in *Johnson* was the Armed Career Criminal Act of 1984, which provides increased punishment for defendants convicted of being a felon in possession of a firearm if they have three previous convictions for a "violent felony." (*Johnson, supra,* 135 S.Ct. at p. 2555.) The statute defined "violent felony" as a felony which included certain specified elements, and enumerated some crimes which also constituted violent felonies. However, it also included a catch-all provision, known as the "residual clause," which defined as a violent felony any felony that "involves conduct that presents a serious potential risk of physical injury to another." (18 U.S.C. § 924(e)(2)(B).)

In prior cases, the Supreme Court had struggled with the meaning of this residual clause and whether it encompassed certain state laws. In *Johnson*, the court concluded that it violated the due process clause, in that the law was "so vague that it fails to give ordinary people fair notice of the conduct it

punishes, or so standardless that it invites arbitrary enforcement. [Citation.]" (*Johnson, supra,* 135 S.Ct. at p. 2556.)

Previously, the court had concluded that in determining whether an offense fell within the residual clause, the court should take a "categorical approach," under which "a court assesses whether a crime qualifies as a violent felony 'in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.' [Citation.]" (*Johnson, supra,* 135 S.Ct. at 2557.) So, in determining if a crime fell under the clause, a court was required "to picture the kind of conduct that the crime involves in 'the ordinary case,' and to judge whether that abstraction presents a serious potential risk of physical injury. [Citation.]" (*Ibid.*)

The Supreme Court concluded that the residual clause was unconstitutional due to two features of this analysis. First, it leaves "grave uncertainty about how to estimate the risk posed by a crime," since it "ties the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements." (*Johnson, supra,* 135 S.Ct. at p. 2557.) Second, the clause provides no guidance as to how much risk is necessary to qualify as a violent felony. The combination of these two factors caused the constitutional problem. "It is one thing to apply an imprecise 'serious potential risk' standard to real-world facts; it is quite another to apply it to a judge-imagined abstraction." (*Id.* at p. 2558.) As the residual clause combined "indeterminacy about how to measure the risk posed by a crime with indeterminacy about how much risk it takes for the crime to qualify as a violent felony," it was too vague to pass constitutional muster. (*Ibid.*)

It is apparent that section 209, subdivision (b) suffers from no similar deficiencies. It is not concerned with a hypothetical "ordinary case" of kidnapping, but instead determines the risk of harm arising from the defendant's actual movement of his or her victim. As the *Johnson* court explained, its holding did not place "in constitutional doubt" the "dozens of federal and state criminal laws [which] use terms like 'substantial risk,' 'grave risk,' and

'unreasonable risk,' . . . ." (*Johnson, supra,* 135 S.Ct. at p. 2561.) This is so because those laws, unlike the residual clause at issue in *Johnson*, "require gauging the riskiness of conduct in which an individual defendant engages on a particular occasion." (*Ibid.*) No abstraction is necessary. The court was clear to state that it did not "doubt the constitutionality of laws that call for the application of a qualitative standard such as 'substantial risk' to real-world conduct; . . ." (*Ibid.*)

Defendant does not argue to the contrary. Instead, he focuses on a passage of *Johnson* which noted that courts had failed, despite repeated efforts, to establish "a principled and objective standard" under which to judge statutes against the residual clause. (*Johnson, supra,* 135 S.Ct. at p. 2558.) The court concluded that "[n]ine years' experience trying to derive meaning from the residual clause convinces us that we have embarked upon a failed enterprise." (*Id.* at p. 2560.) Defendant infers from this language that a history of apparently contradictory opinions is a basis for concluding unconstitional vagueness. Armed with this premise, he sets forth a lengthy history of California court opinions which reach apparently contradictory results when considering only the distances the victims have been moved, or whether the movement was between an enclosed and an open area. Based on this history, defendant argues that there has been a hopeless lack of uniformity in application of the asportation standard, establishing unconstitutional vagueness.

Again, *Johnson* itself rejects this argument. In holding the residual clause vague, the Supreme Court explained, "The most telling feature of the lower courts' decisions is not division about whether the residual clause covers this or that crime (even clear laws produce close cases); it is, rather, pervasive disagreement about the nature of the inquiry one is supposed to conduct and the kinds of factors one is supposed to consider." (*Johnson, supra,* 135 S.Ct. at p. 2560.) The two-element test for asportation sufficient to establish aggravated kidnapping is clear; the factors which are considered with respect to each element are well-

established. Those factors are applied to the alleged crimes actually before the jury. Disputes in application from case to case do not render the statute unconstitutionally vague when the inquiry itself is clear.

3. *Sufficient Evidence of Criminal Street Gang*

Defendant next argues that the criminal street gang enhancement must be reversed as there was insufficient evidence Grumpy Winos constituted a criminal street gang.

Section 186.22 provides for an enhanced sentence when a defendant committed a felony for the benefit of a criminal street gang, with the intent to promote or assist in criminal conduct by gang members. A "criminal street gang" is defined to mean "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more [enumerated criminal acts], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity." (§ 186.22, subd. (f).) Defendant's challenge to the evidence has two parts: (1) there was insufficient evidence of at least three members at the time of the offenses; and (2) there was insufficient evidence that enumerated criminal acts were one of the gang's "primary activities."

As to the first argument, defendant agrees that there is evidence that he was a member, and that Mendoza (who had committed a burglary in May 2014) was also a member. Defendant argues there was insufficient evidence of a third member. We disagree for three reasons. First, Officer Burke testified to 14 members at the time of trial in August 2015, and there was certainly no evidence of an upswing in recruitment *after* defendant's offenses in October 2014. Second, Officer Burke testified that Martinez committed a gang-related attempted murder in January 2015, and further testified that Martinez had joined the gang a year before the shooting. While the officer's testimony was not absolute, it was sufficient for a jury to infer

that he was a member in October 2014.[5] Third, Officer Burke testified that "Homey" refers to a fellow gang member. In the Mazloumian robbery, one of the two male robbers stated, "one of *our* Homies is locked up," (italics added) a statement which implies both that (1) more than one of the robbers was a gang member; and (2) there was a third member of the gang in prison or jail. Defendant argues that the jury could not have inferred that his accomplices were fellow gang members because he elicited testimony from Officer Burke that Officer Burke would not say an accomplice was a fellow gang member without knowing who that accomplice was. But this does not mean a jury could not reasonably infer that two people were members of the same gang when one of them made a representation implying that they were.

Defendant's second argument is that there is insufficient evidence that one of the gang's primary activities was the criminal activity enumerated in the statute. The "primary activities" element can be established in two ways. First, it can be established by evidence that the gang's members "consistently and repeatedly have committed criminal activity listed in the gang statute." (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 324.) In such a case, the charged offenses themselves may be considered in determining whether criminal activity is one of the gang's primary activities. (*Id*. at p. 323.) When a gang has few members, it does not take a lot of crimes to establish a primary activity. (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1219, 1225-1226 [three violent felonies over less than three months are sufficient when the gang consists of six people].) Second, in lieu of establishing consistent and repeated criminal activity, the primary activities element can be established simply by expert testimony that enumerated criminal activity does, in fact,

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[5] Counsel asked, "And when did Mr. Martinez allegedly join this Grumpy Winos group?" Officer Burke responded, "He allegedly started [with] the Grumpy Winos maybe a year prior to that . . . ."

constitute one of the gang's primary activities. (*Sengpadychith,* at p. 324; *Vy,* at p. 1226.) Both tests were met here. Defendant himself committed two multiple-victim robberies in two days; five months earlier, a fellow gang member committed burglary. Both offenses are enumerated in the statute. (§ 186.22, subd. (e)(2), (11).) With a gang this small, this evidence is sufficient to establish consistent and repeated criminal activity. Even if it were not, Officer Burke explicitly testified that the gang's primary activities included narcotics sales, robberies and burglaries –which all fall within the statute. (§ 186.22, subd. (e)(2), (4), (11).) Defendant questions the value of this testimony, arguing that since Officer Burke did not become an expert in Grumpy Winos until October 2014, it can be inferred that all of the crimes he knew of occurred *after* that date – and that, therefore, Grumpy Winos did not qualify as a criminal street gang when defendant committed his crimes. The conclusion does not follow from the evidence; if anything, a contrary one does. In cross-examination, defendant's counsel asked Officer Burke for the date of the "last time" he investigated a burglary committed by a Grumpy Winos member. Officer Burke identified the Mendoza burglary in May 2014, which he did not personally investigate but learned about from other officers. In short, Officer Burke testified that burglary was one of the Grumpy Winos' primary activities, and since the last one he knew of was in May 2014, all other Grumpy Winos burglaries must have predated that one. Therefore, there was sufficient evidence that burglary constituted one of the gang's primary activities prior to defendant's crimes.

4. *The Abstract Must Be Modified*

On appeal, defendant notes an error in the "Determinate" sentence page of his abstract of judgment. Specifically, it identifies six counts of section 211, but incorrectly identifies them as "2st degree burglary," rather than "2nd degree robbery." The prosecution concedes the error and agrees the abstract must be modified. We agree.

We also note numerous other errors in the abstract. The following changes must be made to the "Determinate" page: First, robbery is both a serious felony (§ 1192.7, subd. (c)(19)) and a violent felony (§ 667.5, subd. (c)(9)), so the boxes for "serious felony" and "violent felony" should have been checked as to each robbery count. Second, the "654 Stay" box is checked with respect to count 7, the robbery of one of Mazloumian's friends. This is incorrect; defendant received a concurrent sentence for this robbery, not a stayed one. Third, line 6 on the bottom of the page indicates the total time on the attached page is "Life." The indeterminate term imposed is actually "15 to Life + 10" years. Fourth, a corresponding change must be made on line 8, indicating the total time. It should be "15 to Life + 35," not "Life + 25."

Turning to the "Indeterminate" part of the abstract, the following changes must be made. First, there is no indication of the 15-year minimum imposed on count 1 as a result of the gang enhancement. Line 5 of the abstract provides for "LIFE WITH THE POSSIBILITY OF PAROLE," while Line 6a provides for "15 years to Life." Line 5 is checked instead of line 6a. This error must be corrected. Second, line 8 indicates that defendant was sentenced pursuant to the Three Strikes Law. This is incorrect; it should be modified to indicate that defendant was sentenced pursuant to section 186.22. Finally, although the form indicates that the indeterminate sentence on count 2 is to run concurrently, it does not indicate that the firearm enhancement on count 2 should run concurrently. This, too, must be corrected.

**DISPOSITION**

The abstract of judgment is modified as follows. On the "Determinate" page: (1) counts 3-8 should identify "2nd degree robbery" instead of "2st degree burglary" and each count should be identified as both a serious and violent felony; (2) the "654 stay" box should not be checked for count 7; (3) line 6 should read "15 to Life + 10"; and (4) line 8 should read, "15 to Life + 35." On the "Indeterminate" page: (5) the firearm enhancement on count 2 should be identified as a concurrent term; (6) line 5 should not

be checked; (7) line 6a, identifying a "15 years to Life" sentence should be checked for counts 1 & 2; and (8) in line 8, the box for "PC 667(b)-(i) or PC 1170.12" should not be checked; instead the box for "other" should be checked, and "PC 186.22" specified. In all other respects, the judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.