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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ARTHUR PETER LERMA and MICHELLE ESTELLE CALDERA, Defendants and Appellants.	B256152 (Los Angeles County Super. Ct. No. VA120392)

Appeals from judgments of the Superior Court of Los Angeles County, Raul A. Sahagun, Judge. Affirmed as modified.

Catherine White, under appointment by the Court of Appeal, for Defendant and Appellant Arthur Peter Lerma.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant Michelle Estelle Caldera.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, and Thomas C. Hsieh, Deputy Attorney General, for Plaintiff and Respondent.

Defendants Arthur Peter Lerma and Michelle Estelle Caldera were tried together and convicted by separate juries of attempted first-degree murder and possession of a firearm by a felon. Lerma was also convicted of shooting into an occupied dwelling. The juries found street gang and firearm-use enhancements true, and both defendants admitted the truth of prior-conviction allegations.

On appeal, Lerma contends the trial court erred by failing to instruct the jury that accomplice testimony must be corroborated by evidence of *an element* of the charged crime, and that he is entitled to one additional day of pretrial custody credit. In turn, Caldera contends there was insufficient evidence of her intent to kill, and the court improperly instructed the jurors that they could use Lerma's prior robbery conviction as evidence of Caldera's motive and intent. The People argue that the court erred by failing to impose mandatory assessments and fees on Caldera. We modify the judgments to award an additional day of presentence custody credit to Lerma, and impose required assessments and fees on Caldera. As modified, we affirm.

PROCEDURAL BACKGROUND

The charges against Lerma and Caldera arose from the May 19, 2011 shooting of Gloria Montes. Montes was shot in the head through her open bedroom window. Count one of the information charged both defendants with the attempted, premeditated murder of Montes (Pen. Code,[1] §§ 664/187, subd. (a)). The information alleged count one was committed for the benefit of a criminal street gang (§ 186.22, subds. (b)(1)(C), (b)(4), and (b)(5)), and that a principal used and intentionally discharged a firearm, causing great bodily injury (§ 12022.53, subds. (b)–(d), (e)(1)). Counts two and four charged Caldera and Lerma, respectively, with possession of a firearm by a felon (former § 12021, subd. (a)(1)).[2] Count three charged Lerma with shooting at an

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

[2] The Deadly Weapons Recodification Act of 2010 repealed and recodified former sections 12000 to 12809 without substantive change. (§§ 16000, 16005, 16010.)

inhabited dwelling (§ 246). The information alleged count three was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(4)), and Lerma personally discharged a firearm (§ 12022.53, subds. (b)–(d)).

The information also alleged both defendants had suffered prior convictions. As to Lerma, the information alleged one strike prior (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)), one serious-felony prior (§ 667, subd. (a)), and two prior prison terms (§ 667.5, subd. (b)). As to Caldera, the information alleged three prior prison terms (§ 667.5, subd. (b)).

Defendants pled not guilty and denied the allegations. Before trial, they admitted the prior convictions. After a joint trial, separate juries found defendants guilty on all counts, and found all allegations true.

The court sentenced Lerma to 60 years to life in state prison. The court selected count one (§ 664/187, subd. (a)) as the base term, and sentenced Lerma to 30 years to life (15 years to life, doubled for the strike prior). The court added 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)), and five years for the serious-felony prior (§ 667, subd. (a)(1)), to run consecutive. The court stayed punishment on counts three (§ 246) and four (former § 12021, subd. (a)(1)) under section 654.

The court sentenced Caldera to 32 years to life in state prison. The court selected count one (§ 664/187, subd. (a)) as the base term, and sentenced Caldera to seven years to life. The court added 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)), to run consecutive. The court stayed the gang enhancement (§ 186.22, subd. (b)(4)) and count two (former § 12021, subd. (a)(1)) under section 654, and struck the prior-conviction enhancements (§ 667.5, subd. (b)).

Defendants filed timely notices of appeal.

Former section 12021 was recodified without substantive change at section 29800, operative January 1, 2012. (Stats.2010, ch. 711 (S.B.1080), § 4 [repealed]; Stats. 2010, ch. 711 (S.B.1080), § 6 [reenacted].)

FACTS

1. *Lerma's Prior Robbery Conviction and Defendants' Gang Backgrounds*

Montes and Lerma were both members of the Pico Nuevo criminal street gang.[3] Caldera belonged to Whittier Varrio Locos, a gang "on pretty good terms" with Pico Nuevo. The three had been friends growing up, and Montes and Caldera were best friends.

Lerma's relationship with Montes soured in 2003 when he was convicted of the robbery of two Gigante Market customers in Pico Rivera. Montes was questioned during the robbery investigation and told police that she had gone to Gigante Market with Lerma to use an ATM. In the store were two men, one of whom was African-American. Lerma asked Montes, " 'What is that nigger doing here? Doesn't he know this is Pico Nuevo?' " Lerma then approached the men and repeated his question, but Montes did not see him rob anyone.

Lerma was ultimately convicted of the robbery and sentenced to eight years in prison. While in prison, he sent Montes a threatening letter, telling her that "he was going to come and get her" because she was a snitch and a rat. The letter was never recovered. Montes never saw him again.

In early May 2011, while Lerma was on parole for the robbery, he paid a visit to Jose Trejo, a Pico Nuevo shot-caller in charge of about 100 other gang members.[4] Visiting Trejo was an opportunity for Lerma to make a case to gang leadership that despite his lengthy incarceration, he could still be valuable to Pico Nuevo. Shooting Montes in front of Trejo would be another way for Lerma to reestablish power in the gang and prove that he could be an asset.

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[3] Montes and Lerma were also known by their gang monikers. Montes used the moniker "Go-Go," and Lerma used the moniker "Cartoon."

[4] A shot-caller is a mid-level gang leader who directs younger members of the gang and authorizes their illegal activities.

2. *The Knights Inn Party*

The evening of May 18, 2011, someone rented a small motel room at the Knights Inn to use as the venue for a "hood party"—a gathering at which gang members and their friends assembled to take drugs together. Each of the eight to 15 party guests was connected in some way to Pico Nuevo. For example, Trejo was a "shot-caller" or mid-level gang leader, Tish Sanchez had a son in the gang, Lerma was on parole for a Pico Nuevo crime, and Caldera belonged to an allied gang -- the Whittier Varrio Locos.

Sanchez and Caldera arrived first. They pulled up in Sanchez's white Nissan Altima, which sported fancy rims. Trejo was dropped off by some friends. Most of the people in the room were strangers to Trejo, though he later identified Caldera and Lerma.

All of the party guests smoked methamphetamine that evening; others, such as Trejo, also drank alcohol and smoked marijuana. During the party, Caldera and Lerma were seen talking to each other—either secretively or romantically. At some point, Sanchez saw Caldera holding a cloth gun case.

Eventually, Trejo grew restless and began looking for a ride to another party; Caldera offered to drive him in Sanchez's car. Sanchez rejected this plan—she didn't trust Caldera with her car—but ultimately agreed to let Lerma borrow it for 15 minutes to pick up his girlfriend. She left the key on the counter for him.

3. *The Shooting and Aftermath*

Just after 1:00 a.m., Lerma and Caldera left the Knights Inn with Trejo. Caldera drove Sanchez's Nissan. Lerma rode in the front passenger seat, and Trejo sat in the back. Unbeknownst to them, the Los Angeles Sheriff's Department had placed a GPS tracking device on Sanchez's car the week before as part of an investigation into her activities.

At 1:07 a.m., Caldera stopped the car on a street near Montes's apartment. She retrieved a cloth-wrapped item from beneath her seat and handed it to Lerma. They did not speak to each other over the loud music, but Lerma put the item in his pocket.

Lerma and Trejo got out of the car and walked down a nearby alley, towards Montes's apartment.

Montes shared her small bedroom with Vicky Gollette, who is partially blind. The women slept in separate twin beds. The bedroom window faced the alley, and Montes kept it open to the night air. Montes slept beside the window, and Gollette slept next to the door.

The men approached Montes's window. Lerma looked inside while Trejo stood nearby. Lerma called, "Go-Go," twice through the screen. As soon as the sleeping Montes mumbled a response, Lerma shot her in the head. Then he paused, fiddled with the gun, and fired two or three more shots.

Trejo took off running. Lerma caught up to him at a chain-link fence, and told him if he did not "keep [his] mouth shut," Lerma would "smoke [him]." After delivering this warning, Lerma ran back to the waiting car. Caldera and Lerma drove off in the Nissan at 1:10 a.m.

Montes's neighbors heard the shots and called 911. Emergency dispatch began receiving calls at 1:11 a.m., and sheriff's deputies arrived within minutes. They found Montes in her bedroom, laying on her bed. She had been shot in the right temple, but was moving slightly and making a gurgling noise.

The forensic evidence supported the witness accounts. Police found holes in the screen, blinds, and wall, and a spent bullet in the neighboring apartment; the trajectory of the bullets established that they were fired through the bedroom window and down towards the bed. Though the gun used in the shooting was never recovered, criminalist Manuel Munoz testified the bullets were fired from the same weapon—probably a .38 special, or a .357 magnum revolver, based on the spent bullets and bullet fragments recovered from the scene, and lack of shell casings.

The record does not reveal where the Nissan went, or what Lerma and Caldera did, for the hour following the shooting. However, at 2:13 a.m., Caldera and Lerma arrived at the Colmenero home in nearby Whittier. Melissa and Amie Colmenero were close friends with Caldera, but barely knew Lerma. Melissa later told authorities that

she overheard Caldera tell Amie, " 'we just did a jale' "—a gang job. The Nissan remained at the Colmenero home until 2:24 a.m. It was returned to the Knights Inn soon thereafter.

A few days later, Lerma called Trejo and reminded him to "keep [his] mouth shut." Around the same time, someone told Sanchez to get rid of her car. She was furious, but took it to an auto body shop to have its distinctive rims removed. She also swapped the license plate for a new one.

Montes survived the shooting but was critically injured. The shot injured the right side of her brain, which paralyzed the left side of her body, and blinded her in one eye. Montes wore a helmet in court because she was missing a palm-sized section of the back of her skull. Doctors were unable to save her right ear; they removed it entirely and sewed the opening shut.

After four months in the hospital, Montes was released in September 2011. Though she was able to testify at the preliminary hearing in the summer of 2012, during the following year and a half, Montes took a turn for the worse and slipped into a vegetative state. The parties stipulated to her unavailability, and her preliminary hearing testimony was read at trial.

CONTENTIONS

Lerma contends the trial court erred by (1) not modifying the mandatory jury instruction on accomplice testimony, and (2) not awarding him an additional day of actual presentence custody credit. Caldera contends that (3) her conviction for aiding and abetting attempted premeditated murder was not supported by substantial evidence, and (4) the court erred by instructing the jury that Lerma's prior robbery conviction could be used as evidence of Caldera's intent and motive as to the attempted murder charge. The People contend (5) the court failed to impose required fines and fees on Caldera.

DISCUSSION

1. *The Trial Court Properly Instructed the Jury that Accomplice Testimony Must be Corroborated as Set Forth in CALCRIM No. 335*

At trial, Trejo was called as a witness for the prosecution under a plea agreement. He testified that he met Caldera and Lerma at the Knights Inn, where they drank and did drugs together. Eventually, Trejo grew bored, and Caldera offered him a ride to his next party. They left the motel with Lerma; Caldera drove, Lerma sat in the front seat, and Trejo sat in the back. There was loud music playing, so nobody spoke. Eventually, Caldera stopped the car, retrieved a cloth-wrapped item, and handed it to Lerma. Lerma put the item in his pocket. Trejo and Lerma got out of the car and walked down a nearby alley together. Lerma, who said he knew a girl who lived nearby, looked into apartment windows. Eventually, Lerma stopped at a window and invited Trejo to look inside. Trejo could not see anything, so he moved aside to wait for Lerma. Suddenly, Trejo heard several shots ring out, and took off running. As Trejo scaled a nearby fence, Lerma caught up and warned him that if he did not "keep [his] mouth shut," Lerma would "smoke [him]." Several days later, Lerma called Trejo and repeated his threat.

Based on this testimony, it is undisputed by the parties that Trejo was an accomplice, rendering his testimony incompetent unless corroborated. (§ 1111; *People v. Rodriguez* (1986) 42 Cal.3d 730, 759.) Accordingly, the trial court instructed the jury with CALCRIM No. 335, the relevant instruction on accomplice testimony. Although Lerma neither objected to the instruction nor requested a modification, he contends on appeal that the court erred by failing, sua sponte, to alter it to explain that Trejo's testimony had to be corroborated by independent evidence of *an element* of the charged crimes. Because CALCRIM No. 335 is not explicit on this point, he argues the jury could have determined Trejo's testimony was corroborated by evidence that *connected* Lerma to the commission of the crimes, but did not "relate to an act or fact *which is 'an element of the crime.'*" Lerma therefore asks us to hold that CALCRIM No. 335 incorrectly states the law.

A. *Standard of Review for Instructional Error*

As a preliminary matter, we address the People's argument that Lerma forfeited his challenge to CALCRIM No. 335 because he did not object to the instruction, or seek its revision, at trial. (*People v. Guiuan* (1998) 18 Cal.4th 558, 569–570.) Certainly, the accomplice-corroboration requirement of section 1111 is a substantial right. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1132.) It is also settled that a defendant need not object to preserve a challenge to an instruction that incorrectly states the law and affects his or her substantial rights. (*People v. Mackey* (2015) 233 Cal.App.4th 32, 106 (*Mackey*); see also § 1259.) Even so, "a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general *or incomplete* unless the party has requested appropriate clarifying or amplifying language." (*People v. Tuggles* (2009) 179 Cal.App.4th 339, 364–365, internal quotation marks omitted.)

Here, Lerma does not argue that CALCRIM No. 335 misstates the accomplice-corroboration rule as to effectively nullify it. Instead, he argues "the trial court was obligated to further instruct the jury" with his preferred clarifying language. Because Lerma advocates a modification of the jury instruction rather than its complete rejection, he forfeited the issue by failing to request the additional language at trial. (*Mackey*, *supra*, 233 Cal.App.4th at p. 106.) Notwithstanding the forfeiture, we exercise our discretion to determine whether CALCRIM No. 335 correctly explains the accomplice-corroboration rule. We do so to forestall a later claim that trial counsel's failure to object reflects constitutionally inadequate representation, and because in the context of this case, the argument raises an issue of law that this court decides independently. (*People v. Mattson* (1990) 50 Cal.3d 826, 854.)

B. *CALCRIM No. 335 Correctly Explains the Law*

Enacted in 1872 and last amended in 1915, section 1111 states: "A conviction can not be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the

offense or the circumstances thereof." (§ 1111, as amended by Stats.1915, c. 457, p. 760, § 1.)

CALCRIM No. 335 tracks the statutory language. Here, after instructing the jury that Trejo was an accomplice, the court explained, in relevant part:

> "You may not convict the defendant . . . based on the testimony of an accomplice alone. You may use the testimony of an accomplice to convict a defendant only if: . . . One, [the accomplice's] testimony is supported by other evidence that you believe; [¶] Two, that supporting evidence is independent of the accomplice's testimony; and [¶] Three, that supporting evidence tends to connect the defendant to the commission of the crimes. . . . [¶] [I]t is not enough if the supporting evidence merely shows that a crime is committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime."

In this appeal, Lerma focuses on the requirement that the corroborating evidence must " 'tends to connect the defendant to the commission of the crimes.' " He insists this language is insufficient because it does not require the corroborating evidence to "relate to an act or fact *which is 'an element of the crime.'*"

Lerma is correct that some courts have used the "element of the crime" language to describe the accomplice-corroboration rule. However, he cites no authority—and our research reveals none—for the proposition that CALCRIM No. 335 misstates the statutory requirement in the way he suggests. (§ 1111.) To the contrary, the California Supreme Court has upheld similar instructions. (See *People v. Abilez* (2007) 41 Cal.4th 472, 504–505 [instruction accurately states the law]; *People v. Tuggles*, *supra*, 179 Cal.App.4th at pp. 364–365 [instruction does not allow jury to use accomplice's prior statement as corroboration evidence].) In any event, while the courts have not addressed this precise issue, Lerma's proposed revision to CALCRIM

No. 335 is stylistic, not substantive.[5] We therefore conclude CALCRIM No. 335 is not defective.

C. *Any Error was Harmless*

Even assuming CALCRIM No. 335 misstates the law, "the failure to instruct on accomplice testimony pursuant to section 1111 is harmless where there is sufficient corroborating evidence in the record." (*People v. Miranda* (1987) 44 Cal.3d 57, 100, internal citations omitted.) "The trier of fact's determination on the issue of corroboration is binding on the reviewing court unless the corroborating evidence should not have been admitted or does not reasonably tend to connect the defendant with the commission of the crime." (*People v. McDermott* (2002) 28 Cal.4th 946, 986.) "The law . . . requires only slight corroboration, and the evidence need not corroborate the testimony in every particular." (*People v. Gurule* (2002) 28 Cal.4th 557, 628.)

Here, even without Trejo's testimony, there was other direct evidence of Lerma's guilt, rendering any error in CALCRIM No. 335 harmless. At trial, several witnesses established that Lerma took a direct but ineffective step toward killing Montes by shooting her through her bedroom window.[6] For example, Inez Chavez, who lived with her grandmother in an apartment across the alley from Montes, testified that she saw Lerma shoot into Montes's window. From the front of the apartment, Chavez saw a Nissan with fancy rims pull up and stop. A "veteran cholo," whom she later identified

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[5] The "element of the crime" language first appeared in *People v. Santo* (1954) 43 Cal.2d 319, 327. While *Santo* addressed section 1111, the case it quoted dealt with the corroboration necessary to validate witness testimony under section 1108, a different statute. (*People v. Gallardo* (1953) 41 Cal.2d 57, 63.) Under section 1108, an abortion provider could not be convicted by the uncorroborated testimony of a woman upon whom he performed an abortion. (*Id.* at pp. 61–64.) The woman was not considered an accomplice, however, and the abortion-corroboration rule addressed different evidentiary concerns than those at issue here. Further, nothing about *Santo* or its progeny indicates that the court intended to reinterpret section 1111.

[6] Because Lerma concedes the corroborating evidence need not establish every element of the offense, we confine our discussion to the first element.

as Lerma, got out. Chavez walked to her kitchen on the other side of the apartment, which looked out on a parallel alley, and saw two men walking towards Montes's apartment. The alley was well-lit and Chavez clearly saw their faces. Trejo acted as a lookout. Lerma stood at the window. Lerma called out, "Go-Go." He fired a gunshot into the window, "mess[ed]" with the gun, and fired additional shots. Lerma and Trejo ran in different directions. Then Chavez heard the car drive away; the sound came from the parallel alley, where she had initially spotted the Nissan. Chavez later identified both Trejo and Lerma from six-pack photographic lineups. Chavez's testimony by itself is more than sufficient to support the jury's verdicts in this case.

2. *Lerma is Entitled to One Additional Day of Actual Presentence Custody Credit*

Lerma contends he is entitled to one additional day of actual presentence custody credit. The People concede the error.

A criminal defendant is entitled to actual custody credit for every day of incarceration in county jail, including partial days. (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.) The calculation of actual custodial days includes the day of arrest and the day of sentencing. (*Ibid*.) Lerma was arrested on May 31, 2011 and sentenced on May 7, 2014. The trial court granted, and the abstract of judgment reflects, 1,072 days of actual presentence custody credit. However, the total number of days, including both the day of arrest and day of sentencing, is 1,073. Accordingly, we modify the judgment to award Lerma 1,073 days of actual presentence custody credit.

3. *Sufficient Evidence Supports Caldera's Conviction for Attempted First-Degree Murder as a Direct Aider and Abettor*

Caldera contends there is insufficient evidence to support her conviction for attempted first-degree murder (§ 664/187, subd. (a); count one) because the People did not prove that she knew about, and specifically intended to aid and abet, Lerma's plan to kill Montes. Though Caldera concedes the evidence "firmly implicate[s]" her "in some sort of scheme for Lerma to revenge himself upon the person who put him away for

eight years[,]" she argues the nature of the scheme, and Caldera's specific intent, are "anyone's guess." We disagree.

In assessing the sufficiency of the evidence, we review the entire record to determine whether *any* rational trier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) "The record must disclose substantial evidence to support the verdict—i.e., 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." (*Ibid*.)

In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The same standard applies where the conviction rests primarily on circumstantial evidence. (*People v. Thompson* (2010) 49 Cal.4th 79, 113.) We may not reweigh the evidence or resolve evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Except for accomplice testimony, which must be corroborated, the testimony of a single witness can be sufficient to uphold a conviction—even when there is significant countervailing evidence, or the testimony is subject to justifiable suspicion. (*People v. Zamudio*, *supra*, 43 Cal.4th at p. 357; *People v. Barnwell* (2007) 41 Cal.4th 1038, 1052.) Accordingly, we may not reverse for insufficient evidence unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' " (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

"All persons concerned in the commission of a crime, . . . whether they directly commit the act constituting the offense, or aid and abet in its commission . . . are principals in any crime so committed." (§ 31.) To convict on a direct aiding and abetting theory, the People must prove that the defendant acted "with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense." (*People v. Beeman* (1984) 35 Cal.3d 547, 560.) A "willful, deliberate, and premeditated killing" is murder of the first degree. (§ 189.) Thus, to be guilty of first-degree murder, the aider and abettor

must know about—and share—the perpetrator's premeditated intent to kill. (*People v. McCoy* (2001) 25 Cal.4th 1111, 1118; see *People v. Chiu* (2014) 59 Cal.4th 155, 159-160 [natural and probable consequences doctrine does not apply to first-degree murder].) Whether a defendant has aided and abetted the commission of a crime is "a question of fact for the jury to determine from the totality of the circumstances proved." (*People v. Fleming* (1961) 191 Cal.App.2d 163, 169.)

Premeditation and deliberation require proof of "preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse." (*People v. Perez* (1992) 2 Cal.4th 1117, 1125.) In *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 (*Anderson*), the California Supreme Court set forth three categories of circumstantial evidence sufficient to establish such reflection—planning, motive, and manner of killing. Usually, the People must present either very strong evidence of planning, or slightly weaker planning evidence combined with motive evidence. (*Id.* at p. 27.)

Here, the evidence of planning and motive were sufficient to convict Caldera of the premeditated attempted murder of Montes under a direct aiding and abetting theory. At trial, the People presented evidence that Lerma and Caldera planned the shooting together. (*Anderson*, *supra*, 70 Cal.2d at pp. 26–27.) Importantly, Caldera provided Lerma with the gun before the shooting. Sanchez testified she saw Caldera with a cloth gun case at the Knights Inn. Then, minutes before the shooting, Caldera silently handed Lerma a cloth-wrapped item, which he put in his pocket. Their silence during the car ride supported a conclusion that they had worked out a plan before they left the party—a conclusion reinforced by their secretive behavior at the motel. In addition, Caldera drove Lerma to and from the shooting. After trying to borrow Sanchez's Nissan, Caldera drove Lerma and Trejo to an alley near, but out of sight of, Montes's home.

Although she was parked around the corner, eyewitness testimony established that the shots were loud enough for Caldera to hear. The sound terrified everyone else in the area—Trejo took off running; Gonzalez and Gollette hit the floor; Chavez ran to her grandmother; and other neighbors called 911 within seconds. Yet Caldera waited for Lerma to return to the car before driving off. The jury could have reasonably believed

that Caldera remained calm amid the chaos because the shots did not surprise her; she knew about the plan in advance.

The People also presented evidence from which the jury could have concluded that a personal relationship with Lerma motivated Caldera to aid and abet the crime. Sanchez described them as "being together . . . like [a] relationship." (See *People v. Fleming, supra,* 191 Cal.App.2d at p. 169 [evidence of companionship relevant to aiding and abetting determination].) Caldera's actions after leaving the party also support that conclusion. After driving Lerma to Montes's apartment, Caldera stayed in the car and waited for him to return. An hour later, they arrived at the nearby Colmenero home. Melissa and Amie Colmenero were Caldera's old friends. Although they barely knew Lerma, Caldera brought him to their house in the middle of the night. When she got there, Caldera boasted that she "just did a jale" with Lerma.[7] While Caldera contends "nothing indicated specifically what 'jale' [Caldera] thought" they did together, her statement provided strong evidence of her companionship with Lerma and complicity in the attempted murder. (*People v. Thompson, supra,* 49 Cal.4th at p. 113 ["postcrime actions and statements can support a finding that defendant committed a murder for which his specific mental state is established by his actions before and during the crime."].)

Finally, the shooting avenged Montes's betrayal of both Lerma and Pico Nuevo. And shooting Montes in front of Trejo carried an added personal benefit by demonstrating that Lerma remained valuable to Pico Nuevo despite his incarceration. By offering Trejo a ride that night, Caldera ensured Trejo's presence for Lerma's display. The jury could have reasonably concluded that if Caldera and Lerma were in a relationship, these benefits accrued to her as well.

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[7] A "jale" is a gang job or mission, such as a robbery, shooting, or other violent crime.

In sum, while the evidence at trial was subject to competing inferences, it is sufficient to sustain Caldera's conviction for attempted first-degree murder.

4. *There is no Reasonable Likelihood the Jury Misunderstood or Misapplied CALCRIM No. 375*

Caldera also contends the trial court erroneously instructed her jury that it could use Lerma's prior robbery as evidence of Caldera's motive and specific intent. In assessing a claim of instructional error, we review the instructions as a whole to determine whether the jury may have misunderstood them in the manner suggested by defendant. (*People v. Frye* (1998) 18 Cal.4th 894, 957.) We presume the jurors are intelligent people capable of understanding and applying the instructions. (*People v. Carey* (2007) 41 Cal.4th 109, 130.) Here, there is no reasonable likelihood the jurors interpreted CALCRIM No. 375 to mean that they could consider Lerma's prior robbery as evidence of Caldera's motive or intent.

First, the instruction expressly mentioned Lerma, but not Caldera. Because there was no evidence that Caldera committed an uncharged robbery, the instruction's references to "the defendant" committing an uncharged crime could only have referred to Lerma. Second, the prosecutor did not argue to Caldera's jury that Lerma's prior robbery could be used as evidence of her motive or specific intent. Third, the jurors were instructed that some of the instructions may not apply, and that certain evidence was admitted for a limited purpose.

After reviewing the instructions as a whole and considering them in light of the prosecutor's argument, we conclude there is no reasonable likelihood Caldera's jurors misunderstood or misapplied CALCRIM No. 375.

5. *The Court Failed to Impose Required Fines and Fees on Caldera*

The People contend the court failed to impose required fines and fees on Caldera. Caldera concedes the error. An unauthorized sentence may be corrected any time. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) A trial court's omission of required assessments, surcharges, and penalties may be corrected for the first time on appeal. (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1530.)

The sentencing court must impose a $40 court security fee (§ 1465.8) and a $30 court facilities assessment (Gov. Code, § 70373) on every criminal conviction. (*People v. Sencion* (2012) 211 Cal.App.4th 480, 483–484.) Here, Caldera was convicted of two felonies: attempted murder (§ 664/187, subd. (a)) and possession of a firearm by a felon (former § 12021, subd. (a)(1)). However, the court imposed only one $40 court security fee (§ 1465.8) and one $30 court facilities assessment (Gov. Code, § 70373). While the court in this case stayed count two under section 654, it was required to impose a $40 court security fee and a $30 court facilities assessment on every count of conviction, including the stayed count. (*People v. Sencion*, *supra*, at p. 484.)

Therefore, we modify the judgment to impose an $80 court security fee (§ 1465.8) and a $60 court facilities assessment (Govt. Code, § 70373) on Caldera.

DISPOSITION

We modify Lerma's judgment to award him 1,073 days of actual presentence custody credit. We modify Caldera's judgment to impose an $80 court security fee (§ 1465.8) and a $60 court facilities assessment (Gov. Code, § 70373). As modified, the judgments are affirmed. We direct the court to amend the abstracts of judgment to reflect the modifications, and to forward copies of the amended abstracts of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.