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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. CARLOS L. GALLARDO, Defendant and Appellant.	B228628 (Los Angeles County Super. Ct. No. LA048566)

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

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Paul M. Roadarmel, Jr. and Dana M. Ali, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Carlos L. Gallardo appeals from the judgment entered following a jury trial that resulted in his convictions for second degree murder, attempted murder, shooting from a motor vehicle, and possession of a firearm by a felon. Gallardo was sentenced to a prison term of 72 years to life, plus 20 years.

Gallardo contends: (1) the trial court erred by denying his request to instruct the jury on self-defense; and (2) his concurrent sentence for being a felon in possession of a firearm should have been stayed pursuant to Penal Code section 654.[1] Discerning no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

Jaime Gutierrez and Efrain Telles were employed as security guards at the Gentleman's Players Club, a Sun Valley establishment featuring nude or semi-nude exotic dancers. On March 13, 2005, Gutierrez and Telles were both on duty. At approximately 1:00 a.m., a group of 10 to 20 men and women arrived at the club in two vehicles, a Hummer limousine and a white Escalade (hereinafter the "Hummer group"). The Escalade belonged to the victim, Francisco Herrera Jr.

At roughly the same time, appellant Gallardo arrived in his white convertible Mustang, accompanied by four or five men. The Mustang's top was down. Gutierrez and Telles were both familiar with Gallardo, who was a regular club patron. Gutierrez's forehead was tattooed with the name of a local criminal street gang, " 'Harpy's.' "

As the two groups waited to enter the club, several men from the Hummer group argued with Gallardo and one or more of his companions, "over the girls." Telles stepped between the men, told them he did not want problems at the club, and asked that they take their argument elsewhere. The men ceased arguing and appeared to "calm down." Gutierrez, who was working at the club door, subsequently performed a routine

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1 All further undesignated statutory references are to the Penal Code.

pat-down of both groups for weapons before allowing them into the club. Gutierrez and Telles then switched places, with Gutierrez moving to the club's interior.

Inside the club, the Hummer group sat near the back, and Gallardo's group sat nearby. Gallardo dragged a large lounge chair to the area where the Hummer group was seated, and placed it very close to, and in front of, a bald-headed, one-eyed man who was with the Hummer group. Because Gallardo was "invading the other person's personal space," Gutierrez immediately intervened and ordered him to move the chair. Gallardo complied. Thereafter, the two groups kept giving each other "looks," and there appeared to be tension building between them.

At approximately 3:30 a.m., the club closed and both the Hummer group and Gallardo's group exited to the parking lot. Gutierrez and Telles monitored the exiting patrons outside the club. The Hummer was parked in the middle of the street directly in front of the club, and the Escalade was parked at the curb on the other side of the Hummer. Some members of the Hummer group were getting into the Hummer, while others were standing next to the vehicles and talking.

Meanwhile, Gallardo and his companions entered his Mustang. Gallardo drove out of the club's lot, parked at the edge of the driveway, stepped out of the car, opened the Mustang's trunk, and appeared to search for something inside. It appeared to both Gutierrez and Telles that Gallardo put something from the trunk in his waistband. Both Gutierrez and Telles suspected that the object was a gun. Telles warned Gutierrez to "watch his back." Because "[s]omething didn't feel right," Gutierrez took cover behind a car, while at the same time keeping a clear view of the Mustang.

Gallardo reentered the Mustang and drove to the middle of the street. He caused the Mustang to "burn rubber," apparently by holding the brake while simultaneously pressing the gas pedal. The Mustang's engine was loud and the tires smoked and kicked up gravel from the street. Gallardo's front seat passenger leaned forward, so that his chest was almost touching his knees. Gallardo extended his right arm across the passenger side of the car, toward the Escalade. At the same time, Gutierrez and Telles heard gunfire coming from the Mustang. Neither Gutierrez nor Telles saw the gun.

Gallardo immediately drove rapidly toward San Fernando Road. Gutierrez and Telles heard "return fire" coming "[f]rom the vicinity of the Escalade."

Herrera, who had been standing in the street, was shot and fell to the ground. Several men from the Hummer placed him in the Escalade and drove him to the hospital. He died from a single gunshot to the chest, which pierced his heart. The trajectory of the bullet was consistent with a standing victim being shot by a person seated in a vehicle.

A Los Angeles Police Department detective found six .25-caliber bullet casings at the scene in the street. Two additional .25-caliber bullet casings were found in the Mustang the next day.[2] A .25-caliber bullet was recovered from the victim's body. All the casings and the bullet were determined to have been fired from the same gun.

Five .9-millimeter bullet casings were also found in the street at the crime scene. Another .9-millimeter casing was found on the Escalade's driver's side floorboard. All the .9-millimeter casings were determined to have been fired from the same gun.

Gutierrez and Telles identified Gallardo as the shooter at trial. Gutierrez had also identified Gallardo in a pretrial photographic lineup.

A recording of the incident, taken from the club's surveillance cameras, was played for the jury. The first visible reaction to the shooting by a bystander, as shown in the recording, appeared to occur when the Mustang was driving away.

Gallardo did not present evidence.

2. *Procedure.*

Gallardo's first trial ended with a hung jury, and the court declared a mistrial. At Gallardo's retrial, he was convicted of the second degree murder of Herrera, a lesser included offense of first degree murder (§ 187, subd (a)); the attempted murder of John Doe (§§ 664, 187, subd. (a)); shooting from a motor vehicle (former § 12034, subd. (c));

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[2] Gallardo had dropped the Mustang off at his cousin's house after the shooting, and took her truck in its place.

and possession of a firearm by a felon (former § 12021, subd. (a)(1)).[3] The jury found the allegations that Gallardo personally and intentionally discharged a handgun in commission of the murder, attempted murder, and shooting from a motor vehicle offense not true. It also found the allegation that the attempted murder was willful, deliberate, and premeditated, not true. The trial court denied Gallardo's new trial motion and sentenced him to an indeterminate term of 72 years to life in prison, plus a consecutive determinate term of 20 years. It imposed a restitution fine, a suspended parole restitution fine, a court security fee, and criminal conviction assessments, and ordered Gallardo to pay victim restitution. Gallardo appeals.

DISCUSSION

1. *The trial court did not err by refusing to instruct the jury on self-defense.*

a. *Additional facts and contentions.*

Gallardo requested that the trial court instruct the jury on self-defense. The court declined to do so. It reasoned that "the gist of the two eyewitnesses' account[s was] that the Mustang fired first." Although there was evidence Telles and Gutierrez had, at the preliminary hearing or first trial, denied knowing which shots were fired first, the "core of their testimony" was that "the Mustang shot first." The court also reasoned that Gallardo's "state of mind has not been brought into evidence if he was fearful and shot back even [in] imperfect self-defense or self-defense." The court concluded there was no basis upon which the jury could find a self-defense theory applied.

Gallardo contends that the trial court erred by refusing to instruct on self-defense, in violation of his rights to due process and a determination of every material issue presented by the evidence. He urges that the purported error requires reversal of not only his convictions for murder and attempted murder, but also for his conviction for possession of a firearm by a felon. We disagree.

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3 Sections 12034 and 12021 were repealed effective January 1, 2012, but were reenacted without substantive change as sections 26100 and 29800, respectively. (See *People v. Miller* (2012) 202 Cal.App.4th 1450, 1459.)

b. *Discussion.*

A trial court must instruct on general principles of law that are closely and openly connected to the facts before the court and that are necessary for the jury's understanding of the case, including defenses on which the defendant relies or that are not inconsistent with the defendant's theory of the case. (*People v. Boyer* (2006) 38 Cal.4th 412, 468-469; *People v. Salas* (2006) 37 Cal.4th 967, 982; *People v. Johnson* (2009) 180 Cal.App.4th 702, 707; *People v. Oropeza* (2007) 151 Cal.App.4th 73, 78.) However, a court is not obliged to instruct on theories that lack substantial evidentiary support. (*People v. Burney* (2009) 47 Cal.4th 203, 246; *People v. Johnson, supra*, at p. 707; cf. *People v. Villanueva* (2008) 169 Cal.App.4th 41, 49.) A trial court "need not give instructions based solely on conjecture and speculation." (*People v. Young* (2005) 34 Cal.4th 1149, 1200.) Substantial evidence is evidence sufficient to deserve consideration by the jury, that is, evidence that a reasonable jury could find persuasive. (*People v. Benavides* (2005) 35 Cal.4th 69, 102; *People v. Ross* (2007) 155 Cal.App.4th 1033, 1049-1050.) In deciding whether an instruction is required, a court does not determine the credibility of the defense evidence, but only whether there was evidence which, if credited by the jury, was sufficient to raise a reasonable doubt. (*People v. Salas, supra*, at p. 982; *People v. Villanueva, supra*, at p. 49; *People v. Cole* (2007) 156 Cal.App.4th 452, 483-484.) We independently review the question of whether the trial court erred by failing to instruct on a defense. (*People v. Johnson, supra*, at p. 707; *People v. Oropeza, supra*, at p. 78; cf. *People v. Cook* (2006) 39 Cal.4th 566, 596.) Doubts about the sufficiency of the evidence to warrant an instruction should be resolved in the defendant's favor. (*People v. Moye* (2009) 47 Cal.4th 537, 562; *People v. Tufunga* (1999) 21 Cal.4th 935, 944.)

Homicide is justifiable when committed in self-defense. (§ 197, [¶] 1.) A defendant acts in self-defense when he (1) reasonably believed he was in imminent danger of suffering bodily injury; (2) reasonably believed that the immediate use of force was necessary to defend against that danger; and (3) used no more force than was reasonably necessary to defend against that danger. (*People v. Villanueva, supra*,

169 Cal.App.4th at pp. 49-50; *People v. Lee* (2005) 131 Cal.App.4th 1413, 1427; *People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1261; CALCRIM No. 505.) When deciding whether the defendant's beliefs were reasonable, all the circumstances "as they were known to and appeared to the defendant" must be considered. (CALCRIM No. 505.) "To require instruction on [self-defense], there must be evidence from which the jury could find that appellant actually had such a belief. This evidence may be present even though appellant did not testify or make a statement admitted at trial." (*People v. Viramontes, supra,* at p. 1262.)

In the instant case, the trial court correctly declined to instruct on self-defense because there was no substantial evidence supporting the defense. The evidence showed Gallardo argued with persons in the Hummer group before entering the club. Gallardo acted provocatively toward one member of that group by moving his chair into the man's personal space while inside the club. Immediately after leaving the club Gallardo appeared to retrieve a firearm from his trunk. He again acted aggressively by "burning rubber" near the Escalade. Next he, or another passenger in the Mustang, fired shots at the Escalade without apparent provocation. There was no evidence Gallardo reasonably believed he was in imminent danger of suffering bodily injury at the time shots were fired from the Mustang. To the contrary, the evidence suggested he was *not* afraid of the Hummer group, as evidenced by his antagonistic conduct. There was no evidence regarding his mental state, either circumstantial or direct. There was no showing he believed someone in the Hummer group was armed and about to fire upon him. Contrary to his argument, there was no evidence that someone in the Mustang fired first because someone in the Hummer group "threatened imminently to fire first."

Gallardo correctly argues that the evidence showed two guns were fired at the scene, one from the Mustang and one from the Escalade. He also points out that at the preliminary hearing, Telles and Gutierrez testified, inconsistent with their eventual testimony at the second trial, that they did not know whether the first shots were fired from the Escalade or from the Mustang. Gutierrez testified at the preliminary hearing that he saw someone shoot from the Escalade, but he did not know whether the people

from the Escalade or the Mustang fired first. Telles likewise testified at the preliminary hearing that he did not remember which side fired first. At trial, an officer testified that he interviewed Gutierrez shortly after the shooting, and Gutierrez told him that the first shots were fired from the Mustang; however, due to an oversight, the police report memorializing the interview did not state that the driver of the Mustang fired first. Gallardo further hypothesizes that the earlier confrontation between the two groups, prior to entering the club, gave him reason to believe the Hummer group would fire upon him. Gallardo urges that based upon the foregoing evidence, jurors could have inferred he reasonably believed he was in imminent danger of suffering bodily injury, justifying the immediate use of deadly force in self-defense.

We do not agree. There was consistent and ample evidence at trial that the first shots were fired *from the Mustang*. There was no evidence, either at trial or in the form of prior inconsistent statements made at prior proceedings, that the first shots were fired from the Escalade. The fact the witnesses previously stated they did not know, or did not recall, who fired the first shots is not, on the record here, substantial evidence that the first shots were actually fired by a person in the Escalade. Lack of knowledge is not the same as affirmative evidence an occupant of the Escalade fired first. There was no evidence suggesting Gallardo fired due to a reasonable belief he was in imminent danger. No evidence suggested the victim or anyone in the Hummer group was about to attack Gallardo. There was, for example, no evidence Gallardo shot because he observed someone in the Escalade point a gun at him, or because someone made a verbal threat. In short, the self-defense theory was supported only by conjecture and speculation. (*People v. Young, supra,* 34 Cal.4th at p. 1200.)

Nor do we agree that Gallardo could reasonably have believed he was in danger based on the earlier interactions between the two groups that evening. The initial confrontation outside the club was a verbal argument only, quickly quelled by the security guard. There was no showing anyone in the Hummer group made any type of threat during that argument. Gallardo, not the Hummer group, was responsible for the other two confrontations that evening, that is, the chair incident with the one-eyed man

and the "burning rubber" incident. Gallardo's conduct in these incidents, including his act of "burning rubber" right before the shooting, tended to show he was *not* in fear of any imminent harm. There was no evidence that anyone in the Hummer group responded to Gallardo's aggressive conduct with threats.

People v. Lemus (1988) 203 Cal.App.3d 470, cited by Gallardo, does not compel a contrary conclusion. There, one of the defendants testified that the victim punched him and threatened to kill him. In self-defense, the defendant pulled a knife from his pocket and stabbed the victim. (*Id.* at p. 477.) The trial court declined to give a self-defense instruction, apparently because it did not find the defendant's testimony credible. (*Ibid.*) *Lemus* concluded the trial court erred by declining to instruct on self-defense. (*Id.* at p. 475.) The court observed that the fact defense evidence is not believable does not justify " 'the refusal of an instruction based thereon, for that is a question within the exclusive province of the jury.' " (*Id.* at p. 477.) As is readily apparent, *Lemus* has no application here. Unlike in *Lemus*, there was no testimony that the victim, or anyone in his group, threatened to kill Gallardo or attacked him. The trial court in the instant matter did not refuse the requested instruction because it believed the defense evidence was *implausible*; to the contrary, it found there *was no evidence* supporting the instruction. There was no instructional error.[4]

2. *Section 654 did not preclude the imposition of a concurrent sentence for Gallardo's possession of a firearm conviction.*

The trial court sentenced Gallardo pursuant to the Three Strikes law, as follows: 45 years to life on count 1, second degree murder; a consecutive term of 27 years to life on count 2, attempted second degree murder; a concurrent term of 25 years to life on count 3, possession of a firearm by a felon; a term of 25 years to life on the shooting from a motor vehicle count, stayed pursuant to section 654; and enhancements pursuant to

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[4] Given our resolution of this issue, we do not address the parties' arguments regarding the prejudicial effect of the purported error.

section 667, subdivision (a)(1). The trial court expressly reasoned that Gallardo "had a different criminal objective" in the firearm possession crime.

Gallardo contends that pursuant to section 654, sentence on count 3, felon in possession of a firearm, should also have been stayed. Gallardo urges that he had but a single, indivisible objective in possessing the gun and firing it: to shoot the person with whom he had had a disagreement earlier in the evening. In his view, "all four counts arose from a single course of conduct" and his "status as a felon did not change that."

Section 654, subdivision (a), provides in pertinent part that an "act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Section 654 precludes multiple punishment for a single act or a course of conduct comprising indivisible acts. (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143; *People v. Conners* (2008) 168 Cal.App.4th 443, 458; *People v. Moseley* (2008) 164 Cal.App.4th 1598, 1603.) " 'Whether a course of criminal conduct is divisible . . . depends on the intent and objective of the actor.' [Citations.] '[I]f all the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent' " and therefore may be punished only once. (*People v. Jones, supra,* at p. 1143; *People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) If the defendant harbored multiple or simultaneous objectives, he or she may be punished for each violation committed in pursuit of each objective, even though the violations share common acts or were part of an otherwise indivisible course of conduct. (*People v. Jones, supra,* at p. 1143; *People v. Conners, supra,* at p. 458.)

Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. (*People v. Jones, supra,* 103 Cal.App.4th at p. 1143; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1564.) The trial court's findings will not be reversed on appeal if there is substantial evidence to support them. (*People v. Jones, supra,* at p. 1143; *People v. Perry* (2007) 154 Cal.App.4th 1521, 1525; *People v. Moseley, supra,* 164 Cal.App.4th at p. 1603.)

"We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence." (*People v. Jones, supra,* at p. 1143.)

Whether a violation of former section 12021, forbidding ex-felons from possessing firearms, constitutes a divisible transaction from the offense in which the felon employs the firearm depends on the facts and evidence in each individual case. (*People v. Jones, supra*, 103 Cal.App.4th at p. 1143.) Where the evidence shows a possession only in conjunction with the primary offense, then punishment for the illegal possession of the firearm is improper. (*Ibid*.) Thus, multiple punishment is improper where the evidence demonstrates, at most, that " 'fortuitous circumstances put the firearm in the defendant's hand[s] only at the instant of committing another offense . . . .' [Citation.]" (*Id*. at p. 1144; *People v. Garcia, supra,* 167 Cal.App.4th at p. 1565; *People v. Ratcliff* (1990) 223 Cal.App.3d 1401, 1412; *People v. Bradford* (1976) 17 Cal.3d 8, 22; *People v. Venegas* (1970) 10 Cal.App.3d 814, 821.) On the other hand, " ' "where the evidence shows a possession distinctly antecedent and separate from the primary offense, punishment on both crimes has been approved." ' " (*People v. Jones, supra,* at p. 1143.)

Our opinion in *People v. Jones, supra,* 103 Cal.App.4th 1139, forecloses Gallardo's argument here. In *Jones*, we concluded that "when an ex-felon commits a crime using a firearm, and arrives at the crime scene already in possession of the firearm, it may reasonably be inferred that the firearm possession is a separate and antecedent offense, carried out with an independent, distinct intent from the primary crime. . . . [S]ection 654 will not bar punishment for both firearm possession by a felon (§ 12021, subd. (a)(1)) and for the primary crime of which the defendant is convicted." (*People v. Jones, supra,* at p. 1141.)

In *Jones*, defendant Jones and another man drove to the home of Jones's ex-girlfriend, Kyshanna Walter. The driver rang the girlfriend's doorbell and asked to speak to her. Upon being informed she was not available, he and Jones drove off. Fifteen minutes later, the men returned and slowly drove past Walter's home. Jones fired several shots at the house. (*People v. Jones, supra,* 103 Cal.App.4th at pp. 1141-1142.) Jones

was convicted of shooting at an inhabited dwelling and being a felon in possession of a firearm. The trial court imposed sentence on both counts. On appeal, Jones argued that, because his possession of the gun was incidental to and simultaneous with the primary offense of shooting at an inhabited dwelling, section 654 precluded the imposition of sentence on both offenses. (*People v. Jones, supra,* at p. 1142.) We rejected this contention. We explained, "section 654 is inapplicable when the evidence shows that the defendant arrived at the scene of his or her primary crime already in possession of the firearm." (*Id.* at p. 1145.) It was a reasonable inference that Jones's possession of the firearm was antecedent to and separate from the primary offense of shooting at an inhabited dwelling. (*Id.* at p. 1147.) "It strains reason to assume that Jones did not have possession for some period of time before firing shots at the Walter home. Any other interpretation would be patently absurd. Jones committed two separate acts: arming himself with a firearm, and shooting at an inhabited dwelling. Jones necessarily had the firearm in his possession *before* he shot at Kyshanna's house . . . . It was therefore a reasonable inference that Jones's possession of the firearm was antecedent to the primary crime. [Citation.] Section 12021 is violated whenever a felon intentionally has the weapon in constructive or actual possession. [Citation.] Jones necessarily must have had either actual or constructive possession of the gun while riding in the car, as evidenced by his control over and use of the gun during the shooting. Jones's violation of section 12021 was complete the instant Jones had the firearm within his control prior to the shooting. [Citation.]" (*People v. Jones, supra*, at p. 1147.) Further, the evidence "supported an inference that Jones harbored separate intents in the two crimes. Jones necessarily intended to possess the firearm when he first obtained it, which . . . necessarily occurred antecedent to the shooting. That he used the gun to shoot at Kyshanna's house required a second intent *in addition* to his original goal of possessing the weapon. Jones's use of the weapon after completion of his first crime of possession of the firearm thus comprised a 'separate and distinct transaction undertaken with an additional intent which necessarily is something more than the mere intent to possess the proscribed weapon.' [Citation.]" (*Ibid.*)

Jones is indistinguishable from the case at bar. The evidence was sufficient to show Gallardo came to the Gentleman's Players Club with a gun in the trunk of his car. He owned the Mustang; he obviously had knowledge of, and control over, the gun as evidenced by the fact that he retrieved it from the trunk just prior to the shooting. Gallardo necessarily had possession for some period of time *before* he entered the club and before he retrieved the gun from the trunk. He committed two separate acts: arming himself with the gun, and using the gun, or allowing an accomplice to use the gun, in the shooting. It was therefore a reasonable inference that his possession of the gun was antecedent to the primary crime. (See *People v. Jones, supra,* 103 Cal.App.4th at p. 1147; *People v. Ratcliff, supra,* 223 Cal.App.3d at p. 1413.) Certainly the evidence did not suggest that fortuitous circumstances put the firearm in Gallardo's hand only at the instant of committing the shooting. (See *People v. Jones, supra,* at p. 1144; *People v. Bradford, supra,* 17 Cal.3d at p. 13 [defendant wrested away an officer's revolver when stopped for speeding, and shot at the officer with it]; *People v. Venegas, supra,* 10 Cal.App.3d at pp. 820-821 [evidence suggested defendant obtained gun in a struggle shortly before shooting with it].)

The evidence likewise suggested Gallardo had separate intents. Just as in *Jones,* Gallardo necessarily intended to possess the firearm when he first obtained it, *prior* to the shooting and the conflict with the Hummer group. That he used the gun to shoot at the Hummer group, or furnished it to an accomplice to do so, necessarily required a *second* intent in addition to his original goal of possessing the weapon. (*People v. Jones, supra,* 103 Cal.App.4th at pp. 1147-1148.)

Gallardo argues that he arrived at the club with four or five companions, "any one of whom might have been the possessor of the firearm." He argues that it was not certain he actually retrieved the gun from the trunk. He points out that the security guards saw him open the trunk and retrieve something, but neither saw that the item was a gun. But, as noted, whether section 654 applies is a question of fact for the trial court, and its findings will not be reversed on appeal if they are supported by substantial evidence. The testimony of the security guards provided sufficient evidence that Gallardo retrieved a

gun from the trunk, even though they did not actually see a firearm. They testified that Gallardo's actions of looking in the trunk and putting an item in his waistband strongly suggested to them that Gallardo was arming himself. Moreover, Gallardo was searched before he entered the club, lending credence to the theory that he retrieved the gun from the trunk after the club closed.

Finally, we observe that the purpose of section 654 is to ensure that punishment is commensurate with a defendant's culpability. (*People v. Jones, supra*, 103 Cal.App.4th at p. 1148.) "This concept 'works both ways. It is just as undesirable to apply the statute to lighten a just punishment as it is to ignore the statute and impose an oppressive sentence.' [Citation.] Section 12021 uniquely targets the threat posed by felons who possess firearms. [Citation.]" (*Ibid.*) There is no reason why a felon who chooses to arm himself in violation of former section 12021 should escape punishment for that offense because he then uses the firearm to commit a second offense. (*People v. Jones*, *supra*, at p. 1148.) Punishment for both the possession of a firearm by a felon and the murder and attempted murder is commensurate with Gallardo's culpability and furthers the legislative goal of discouraging firearm possession by felons. (See *ibid*.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.