Filed 6/13/12 P. v. Zimmerman CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. CLARENCE ZIMMERMAN, Defendant and Appellant.	B232689 (Los Angeles County Super. Ct. No. TA112139)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allen Joseph Webster, Jr., Judge. Affirmed as modified.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

The jury found defendant and appellant Clarence Zimmerman guilty of attempted murder in count 1 (Pen. Code, §§ 664, 187, subd. (a)(1))[1] and possession of a firearm by a felon in count 2 (§ 12021, subd. (a)(1)). With respect to count 1, the jury found true the special allegation that defendant committed the offense willfully, deliberately, and with premeditation (§ 664, subd. (a)); personally discharged a firearm during commission of the offense (§ 12022.53, subds. (b)-(d)); and committed the offense for the benefit of, at the direction of, and in association with a criminal street gang (§ 186.22, subd. (b)(1)(C)). The trial court found true the allegations that defendant had served one prior prison term (§ 667.5, subd. (b)) and suffered one prior conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).

The trial court sentenced defendant to a base term of 15 years to life on count 1, doubled pursuant to the three strikes law, with a consecutive enhancement of 25 years to life pursuant to section 12022.53, subdivision (d). A consecutive term of eight months was imposed on count 2, also doubled pursuant to the three strikes law. The court imposed a one-year prior prison term enhancement to run concurrently with the sentences on counts 1 and 2. The total sentence imposed was 56 years 4 months. Defendant was awarded 357 days of actual presentence custody credit and no local conduct credit.

Defendant contends on appeal that the trial court improperly precluded defense counsel from posing a hypothetical question to an expert witness, thereby depriving defendant of his constitutional right to present a complete defense. Defendant also contends the trial court failed to award appropriate good time credits and requests that the case be remanded for resentencing, an issue conceded by the Attorney General.

We direct the trial court to issue an amended abstract of judgment that reflects an award of 53 days of good time credit under section 2933.1, but otherwise affirm the judgment.

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[1] Unless otherwise indicated, all statutory references are to the Penal Code.

FACTS

At about noon on April 25, 2010, Donte Brookins was walking in his neighborhood in the area of 105th Street and McKinley Avenue in Los Angeles. Brookins was aware that the area was territory claimed by the Front Street Crips. Brookins was a member of the Avalon Gardens Crips and had visible gang tattoos on his neck, forearms, and hands. The two gangs were not rivals, and Brookins got along with some Front Street members, although he did not talk to or "hang out" with them.

As Brookins was walking, two men turned onto the street in a grey Nissan Altima. Defendant was in the passenger seat, which was the side of the vehicle closer to Brookins. Brookins recognized defendant as someone he had seen around the neighborhood, and although they had no previous interactions, he was not concerned because he did not consider defendant to be an enemy. Brookins believed defendant was a member of the Back Street Crips, a gang that was not a rival of Brookins's gang but a rival of the Front Street Crips. The Back Street Crips and the Front Street Crips had a history of violent encounters.

Brookins continued to walk along 105th Street. The vehicle stopped and defendant, who Brookins knew as "Chuck," got out holding a gun. Brookins looked at defendant and yelled "Chuck" five times to let defendant know that he was not a member of the Front Street Crips. Brookins was unarmed, did not have any animosity towards defendant, and did not threaten him. Defendant shot at Brookins five times from approximately 15 to 20 feet away, hitting him once in the abdomen. Defendant reentered the Nissan and left. Brookins continued to call defendant's name because he was "shocked" and "wanted to talk about it." The entire incident lasted about 20 seconds.

Los Angeles Police Officer Travis Johnson responded to a call reporting the shooting. He recovered four .45-caliber shell casings discharged from a semi-automatic weapon at the scene. A fifth shell casing was not recovered, but was visible in photographs of the scene. The firearm used in the shooting was not recovered.

Brookins was admitted to the hospital and underwent two surgeries in which his colon and part of his intestines were removed. While Brookins was in the hospital, Los Angeles Police Officer Timothy Colson showed him a photographic lineup or "six-pack." Brookins identified defendant as the shooter from the lineup.

Los Angeles Police Officer Samuel Marullo and his partner arrested defendant at his home 10 days after the shooting. The officers recovered a baseball cap with the letter "B" on it and a T-shirt with writing on it related to the Back Street Crips, along with two cell phones recovered from his person. Defendant was also wearing a baseball cap with a "B" on it when he was arrested. Officer Marullo had contact with defendant on "many" prior occasions. Defendant had previously told Officer Marullo that he was a member of the Back Street Crips. Officer Marullo knew defendant by the monikers "Chuck" and "Crypto."

Officer Colson reviewed the contents of the cell phones and discovered pictures of defendant with Back Street Crips members in which some of the men were "throwing" gang signs and wearing T-shirts with "BSC, 109th Street" written on them. There were also three incoming text messages recovered from the phones that pictured a handgun and a magazine. One had the text "11S45HP" underneath the photo of the gun. Officer Colson testified that "45HP" meant a .45 Hi Point gun.

Brookins and his wife were homeless and living in San Francisco at the time of trial. They were provided with $30 meal vouchers, lodging, and transportation to Los Angeles so that Brookins could testify at trial. Brookins testified that his gang would not approve of him testifying at trial because street code prohibited snitching. He stated the consequences of testifying "vary up to death," and he was taking a big risk that "a lot of harm" would come to him. Brookins left Los Angeles and went to San Francisco after he was shot, but it still was not easy for him to testify against defendant because he did not feel good about it and did not like "putting people in jail."

On cross-examination, Brookins testified that he did not appear at the preliminary hearing on May 7, 2010, because he did not have money to make the trip. Brookins explained the reason he could not appear to the officer who subpoenaed him and

"[w]hoever I talked to. I constantly told them [that I could not pay for the trip]." Brookins failed to appear at trial on January 7 and again on January 18 or 19.

Brookins agreed to be interviewed by Bill Moore, an investigator for defendant, on the Friday before he testified at trial. Brookins recalled telling Moore that he did not know the person who shot him, and that he turned toward the shooter as he was shot but did not recognize him. Brookins told Moore that he identified defendant in the photographic lineup because his "homeboys" had come to visit him in the hospital and told him that the word on the street was that defendant shot him. He told Moore that he would not be able to identify defendant in court because he could not identify the person who shot him. Brookins explained that he made the statements to Moore because "in [his] heart he did not want to see this man in jail," and he forgave defendant for what happened. Brookins said he was trying to get defendant "off the hook."

Moore confirmed that he interviewed Brookins. Brookins was not nervous or reluctant when they spoke. There was nothing in Brookins's demeanor that indicated Brookins was being evasive during the interview.

Los Angeles Police Officer Jeffrey Heller testified for the prosecution as an expert on gangs. Reputation and respect are very important to gangs and are attained by acts of violence. Having a reputation for violence allows gangs to maintain their territories by creating an atmosphere of fear and intimidation. Other gangs will be less likely to interfere with their criminal activities and citizens will be afraid to report them. Officer Heller explained that a "snitch" is someone who talks openly to the police about criminal activity. The consequences of being labeled a snitch can range from being beaten up to being killed. Both rival gangs and the snitch's gang may retaliate because it is against the code to snitch. A person who snitches is considered unreliable by all gangs and cannot be trusted not to tell police about the criminal activity of his own gang. A gang's territory has significant importance because it gives the gang a base of operation and a place to draw new members. If a member of a different gang wanders into another gang's territory there can be serious consequences ranging from a beating to death.

Officer Heller testified specifically regarding the Back Street Crips. The gang goes by "B," "BS," "BSC," or "Back Street" and uses these names in tattoos and for tagging. They also use a hand sign for the letter "B." The Back Street Crips and the Front Street Crips are rivals who have had numerous violent encounters. The Back Street Crips' primary activities include robberies, narcotics sales, burglaries, auto theft, shootings, assaults with deadly weapons, and murder. Officer Heller had numerous contacts with defendant and knows him to be a member of the Back Street Crips who goes by the monikers "Chuck" and "Crypto." Defendant has several tattoos that Officer Heller identified as Back Street Crips insignias. He identified gang members in photos taken from defendant's cell phone.

Officer Heller testified that the area where the shooting took place was within the territory of the Front Street Crips. Given the hypothetical situation in which a Back Street Crip shoots an Avalon Gardens Crip in Front Street Crips' territory, Officer Heller opined that the shooting would have been for the benefit of the Back Street Crips because it is an act of disrespect to shoot someone in broad daylight in a rival gang's territory. He opined that it was irrelevant whether the person who was shot was a rival gang member because shooting anyone in another gang's territory would be considered an attack on the territory.

Tiffany Shelton, defendant's girlfriend, provided an alibi for defendant at the time Brookins was shot. Defendant spent the night of April 24, 2010, with Shelton, sleeping in the same bed. When she got up between 11:00 a.m. and 11:30 a.m. on April 25, defendant was still asleep. He did not wake up until 12:30 p.m. or 1:00 p.m. Defendant was in the apartment with Shelton until she had to leave to attend a barbeque at 3:00 p.m. Shelton found out about defendant's arrest on May 5, 2010, and after learning the date and time of the shooting, she was able to determine that defendant had been at her house at the time of the offense. Shelton did not go to the police station to report that defendant was with her at the time of the shooting because the police would not have listened to her. She first made a statement when a defense investigator contacted her a few months later. She told the investigator the same things that she testified to at trial. On cross-

examination, Shelton stated that she might have woken up as late as 11:30 or 12:00. She was not certain of the exact time she woke up, but she was certain that she did not leave her apartment until 3:00 because she went to a barbeque that day.

Dr. Mitchell Eisen testified as an expert in eyewitness memory and suggestibility for the defense. Dr. Eisen testified that the human memory does not capture detail in the way that a camera would because there are limits on how much information can be taken in at one time. Dr. Eisen explained that there are gaps in memory which people fill in by inference. Once a person has reconstructed an event by filling in any gaps with inferences, those inferences become part of the memory. People will confuse the source of remembered information and believe that something someone described after the event actually occurred during the event if it makes sense. Dr. Eisen testified that as stress increases to a traumatic level, people will tend to focus very intensely on some core experience at that moment. People will vary in what they focus on, but in general, whatever they focus on will limit their ability to focus on other details. People vary greatly in what they can remember following a traumatic experience. Some will experience a total inability to recall, whereas others will be relatively unaffected. Dr. Eisen opined that memory is best right after an incident occurs. Over time, details are lost and post-event information, including statements of others, is incorporated as part of the memory. The longer someone looked at another person's face, the better their memory of it would be. When there is a weapon involved in a traumatic experience, people will tend to focus on the weapon to the exclusion of other details. People vary as to how they react to the sight of a weapon. Some will be unable to process anything else well, but others will be minimally affected. People tend to become more confident in the accuracy of their memories over time. A witness's confidence in their memories is not a good indicator of their accuracy. However, people can and do make accurate identifications all the time. Dr. Eisen opined that if a witness knows a person before an event involving that person, the witness may be more likely to be able to make a positive identification. Accuracy increases proportionately to how well the witness knows the

person. If a witness does not know a person well, he may confuse the context in which he is familiar with the person.

DISCUSSION

Whether the Trial Court Erred in Preventing Defense Counsel from Posing a Hypothetical Question to an Expert Witness

At trial, defense counsel posed the following hypothetical to Dr. Eisen:

"[Defense counsel]: I want you to assume that a shooter hops out of a car and fires several shots at [an] eyewitness. The eyewitness is taken to the hospital. When the eyewitness awakes from surgery, he is visited by some of his homeboys not present at the shooting, but heard it was somebody the witness knows.

"The eyewitness does not show at the preliminary hearing to identify the shooter and does not show initially at trial to identify the shooter. Almost a year later, the eyewitness gives a statement to an investigator that he is unable to identify the shooter. Five days later, the eyewitness finally testifies at trial and identifies the person he knows as the shooter.

"Here's my question. You mentioned before post-event information. Is post event information a factor relevant to the eyewitness identification?"

The prosecution objected to the question as an "improper hypothetical. Calls for an improper opinion." The objection was sustained by the trial court. Defense counsel posed several questions based on the hypothetical to which the prosecution objected "based on the facts as stated in [the] hypothetical." These objections were also sustained by the court. Counsel then conferred with the bench regarding the hypothetical. Defense counsel stated that he did not understand the court's ruling. The court clarified several times that the facts as stated were inaccurate. Defense counsel asked in what way the facts were inaccurate, and the trial court explained that it was not appropriate for the court to recount the facts for him because the court would be unfairly favoring the

defense if it did so. The prosecution explained that the evidence as it had been presented was misstated. The prosecution pointed out defense counsel omitted the eyewitness recognized the shooter prior to the shooting and omitted the eyewitness's explanation for his statements to the defense investigator. Defense counsel said that he would "throw that in." Defense counsel then reiterated that he was confused as to the basis for the objection because the facts were correct. The court answered, "My position is that you can ask -- obviously hypotheticals are part of the trial and it's even a jury instruction. But it's got to be an appropriate and . . . correct and accurate hypothetical . . . ." The court then stated, "[I]f you want to try it again, you can. I'm not limiting you. You can give as many hypotheticals as you want to . . . ." Testimony resumed and defense counsel posed the following revised hypothetical:

"[Defense counsel]: Okay. I'm going to try the hypothetical again. I'm going to add some testimony we've heard in this case, okay.

"We're talking here about, I guess, a way to say hypothetically is the eyewitness being the person that was shot, okay, describes the event as the shooter hopped out of the car and fired several shots at him. He added that he recognized the shooter as someone he knew and said his name, right. And but the shooter shot him, okay. That's the incident as related by the eyewitness who was the victim. The eyewitness was then taken to the hospital.

"And then when the eyewitness awoke from surgery, he related the following to an investigator. He said that when he awoke he reported to the investigator that when he awoke from surgery he was visited by some of his homeboys, that he heard the word on the streets was that a person, that this person that he knew was the shooter, okay. And that is what he -- happened when he awoke from surgery. That's the second point. Third point, rather.

"Fourth point is he didn't show up and testify at preliminary hearing and identify the shooter. He reported or testified that, I think it was he didn't have the money or because he was unable to or it was because he was unable, okay.

"Thereafter he does not show up for trial and make an identification, but he does show up for trial eventually. About a year after the shooting. Are you with me so far, Dr. Eisen?

"[Dr. Eisen]: Yes.

"[Defense counsel]: I'm sort of ad-libbing, but I want to give you everything I can, okay.

"[Dr. Eisen]: Yes.

"[Defense counsel]: At that time when he shows up, this is when he tells an investigator that he cannot identify the shooter, that he was in the hospital, that his homeboy showed up and told him the person that he knew, okay, was -- that was the word on the streets, that the person he knew was the shooter.

"And then he . . . , some time thereafter, a short time thereafter he's visited by the police and he tells the police -- well, let's put it this way. He's shown a six-pack, and in the six-pack is the picture of the person that he knew, okay. And he picks out the person in the six-pack as the shooter for the police. This was after his homeboys visit him, according to him -- and at one point. And after that, okay.

"Then we have this period of time goes by, almost a year. And then like I said, he's visited by an investigator a short time before he testifies, five days before he testifies. And at that time he says that he didn't recognize or he can't identify the person who shot him, but that he did tell the police that it was the person he knew. But that was after his homeboys had visited him and told him that word on the street was that it was that person.

"He then comes into court to testify, and when he testifies he identifies the person that he knew who is sitting in the courtroom as the shooter. And he gives an explanation why he gave the contrary statement five days before to the investigator, okay.

"Now, you mentioned post-event information. Is post-event information a factor relevant to the eyewitness identification in the hypothetical?"

The prosecution objected to the hypothetical as stated and to the opinion. The trial court sustained the objections. Defense counsel then stated that he intended to put the

remaining questions he had on side bar to make a record of them because he would not be able to ask them due to the court's ruling. The court did not allow defense counsel to do so, stating that defense counsel could ask as many questions as he liked and would not be limited by the court, but that the questions had to comply with the rules of evidence. Counsel then asked a series of questions without reference to the hypothetical.

Defendant argues the trial court improperly precluded defense counsel from posing a hypothetical question to Dr. Eisen, thereby depriving defendant of his constitutional right to present a complete defense. Defendant contends the court's ruling prevented him from presenting qualified expert testimony on factors which were evidenced in the record that may have affected Brookins's ability to accurately identify the shooter. Defendant asserts that absent the error, it is reasonably probable a more favorable verdict would have been reached under the California test for prejudicial error. He also argues the prosecution cannot establish that the error was harmless beyond a reasonable doubt under federal constitutional standards.

The Attorney General responds that the trial court did not err in sustaining the objection because the hypothetical questions defendant posed omitted essential facts established at trial and implied facts contrary to those established. The Attorney General also asserts that, even assuming the court erred in sustaining the objection, such error was harmless. Defendant contends, however, that all the facts in the hypothetical questions were established by the trial record, and the omitted facts were not relevant to the questions posed to Dr. Eisen.

"'Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense."'" (*Holmes v. South Carolina* (2006) 547 U.S. 319, 324, *quoting Crane v. Kentucky* (1986) 476 U.S. 683, 690.) "Few rights are more fundamental than that of an accused to present witnesses in his own defense." (*Chambers v. Mississippi* (1973) 410 U.S. 284, 302 (*Chambers*).) However, "[i]n the exercise of this right, the accused . . . must comply with established rules of procedure and evidence

designed to assure both fairness and reliability in the ascertainment of guilt and innocence." (*Ibid*.) The usual rule is that "'"the ordinary rules of evidence do not impermissibly infringe on the accused's [constitutional] right to present a defense. . . ."' [Citations.]" (*People v. Lawley* (2002) 27 Cal.4th 102, 155.) Notwithstanding this rule, where the trial court excludes evidence vital to the defendant's defense it deprives him of a fair trial in violation of his right to due process. (*People v. Babbit* (1988) 45 Cal.3d 660, 684-85, discussing *Chambers*, *supra*.)

In most instances, "'"an expert may render opinion testimony on the basis of facts given 'in a hypothetical question that asks the expert to assume their truth.'. . ." [Citation.]'" (*People v. Moore* (2011) 51 Cal.4th 386, 405 (*Moore*), *quoting People v. Richardson* (2008) 43 Cal.4th 959, 1008 (*Richardson*).) The choice of facts used to frame a hypothetical question is given considerable latitude. (*Richardson*, *supra*, at p. 1008.) "'"Such a hypothetical question must be rooted in facts shown by the evidence, however. [Citations.]" [Citation.] . . . ". . . The statement may assume facts within the limits of the evidence, not unfairly assembled, upon which the opinion of the expert is required . . . ." [Citation.]' [Citation.]" (*Moore*, *supra*, at p. 405, *quoting Richardson*, *supra*, at p. 1008.) Although the hypothetical question does not need to include all the facts of a case, it must not omit essential facts or issues. (*People v. Stamp* (1969) 2 Cal.App.3d 203, 209, fn. 2.) A "hypothetical question not based on the evidence is irrelevant and of no help to the jury." (*People v. Vang* (2011) 52 Cal.4th 1038, 1046.) This is because "'the law does not accord to the expert's opinion the same degree of credence or integrity as it does the data underlying the opinion. Like a house built on sand, the expert's opinion is no better than the facts on which it is based.' [Citation.]" (*People v. Gardeley* (1996) 14 Cal.4th 605, 618 (*Gardeley*).)

The trial court has broad discretion to exclude expert testimony on the basis that the risk of undue delay, prejudice, or confusion substantially outweighs its probative value. (Evid. Code, § 352; *Richardson*, *supra*, 43 Cal.4th at p. 1008; *Gardeley*, *supra*, 14 Cal.4th at p. 619.) Moreover, the trial court "'has considerable discretion to control the form in which the expert is questioned . . . .' [Citation.]" (*Gardeley, supra,* at p. 619.)

This court reviews the trial court's decision to admit or exclude expert testimony under an abuse of discretion standard. (*People v. Smith* (2003) 30 Cal.4th 581, 627.)

Defendant's arguments fail. In the case of the first hypothetical, it is true that all the individual facts as stated in the hypothetical are independently established in the record. This, however, does not establish that the hypothetical question is not objectionable, because the facts must be complete in their essentials and not "unfairly assembled." A hypothetical that omits essential facts is not sufficiently analogous to the case at hand and is therefore not relevant and not helpful to the jury.

In his first hypothetical, defendant omitted evidence that (1) the victim recognized the suspect before the shooting; (2) the victim called the suspect's name multiple times prior to the shooting; (3) the victim made a photographic identification of the suspect while in the hospital; and (4) the victim explained that he told the investigator he could not identify the shooter because he did not want the shooter to go to jail. Omission of these particular facts significantly alters the hypothetical. Dr. Eisen opined that a witness's familiarity with a suspect could affect the witness's ability to identify the person, and that the level of stress a witness was experiencing and the passage of time had an effect on memory. Thus, whether the witness knew the shooter, whether he recognized the shooter prior to the shooting when he was not yet under stress, and the amount of time that passed between the shooting and the first identification are all facts that would impact Dr. Eisen's response. The victim's explanation for why he stated that he could not identify the shooter is also relevant, as whether the witness was inconsistent because he equivocated about what he remembered or changed his answer purposefully also impacts the expert analysis.

The second hypothetical suffers from both omissions and misstatements of the facts. We have already discussed why omission of the fact that the victim recognized the suspect before the shooting occurred and the explanation for the witness's statement to the investigator are significant omissions. The second hypothetical also incorrectly states that the witness spoke with an investigator while in the hospital and then identified a suspect to police a few days later. Dr. Eisen testified that the timing of an identification

is crucial because memories deteriorate over time. The facts at trial established that Brookins identified defendant from a photographic line-up while still in the hospital and did not make a contrary statement to the defense investigator until about a year later. In contrast, defendant's second hypothetical question suggested that while he was still in the hospital the witness told an investigator that his homeboys informed him the word on the street was that the shooter was someone he knows, and the witness made an identification to the police a few days later. The hypothetical is also misleading with respect to whether the witness told police that his homeboys told him the shooter was someone he knew. Dr. Eisen testified that post-event information and the passage of time can impact the accuracy of memory. The facts and Dr. Eisen's assessment of them would be significantly different if the witness stated to the police that his homeboys identified the shooter as someone he knew, while he was at the hospital.

The trial court could reasonably conclude the defense's renditions of the facts in the hypothetical posed to Dr. Eisen are simply not analogous to the facts established at trial. It would not have been helpful for the jury to be presented with an expert opinion that was unrelated to the case, or even worse, confusing to the jury and prejudicial. We therefore hold the trial court did not err in sustaining the prosecutor's objections to defendant's hypothetical questions.

As we noted above, when the trial court does not err under the rules of evidence, there are still instances in which defendant may be deprived of a fair trial in violation of his state and federal constitutional rights. The question asked at the end of both hypothetical questions dealt with post-event information which might impact identification. This subject was expressly covered in other questions posed to Dr. Eisen.

Defendant also elicited ample testimony from Dr. Eisen regarding the other factors that may degrade a witness's memory. Defendant was able to fully present the particular facts of his case. The trial court gave defendant unlimited opportunities to pose factually accurate hypothetical questions to Dr. Eisen, and the prosecution clearly explained the nature of its objections to the inaccurate hypothetical questions that were posed. We

therefore hold that defendant was provided with a fair trial and that his constitutional rights were not violated under state or federal law.

Whether the Trial Court Awarded Appropriate Good Time Credits

Defendant argues the trial court failed to award appropriate conduct credits and asserts the case should be remanded for resentencing. The prosecution agrees the trial court erred and requests this court modify defendant's sentence to reflect an award of 53 additional days of presentence custody credit under section 2933.1. We order the additional credits be awarded but reject the request to remand the cause for resentencing.

The trial court did not award good conduct credits at sentencing, stating only:

"Mr. Zimmerman is given credit for 357 actual days served in jail for a grand total of 357 days. The law conducts good time one-third of one-half sentence that is imposed by the court. The exception case based upon the charges. [*sic*] [¶] Pursuant to Penal Code Section 2933.170(c) and *Ramos, People versus Ramos* which is a 1996 case, 50 Cal.App.4th 510."

As the parties point out, section 2933.17, subdivision (c), as cited by the trial court does not exist, and *Ramos* likely refers to *People v. Ramos* (1996) 50 Cal.App.4th 810, a case that discussed the 15 percent limitation applied under section 2933.1.

At sentencing, the trial court has a duty to determine the total number of days of presentence custody and conduct credit and to order those days to be reflected in the abstract of judgment. (See § 2900.5, subds. (a), (d); Cal. Rules of Court, rule 4.472; *People v. Duesler* (1988) 203 Cal.App.3d 273, 276.) Defendant should have been awarded good conduct credit pursuant to section 2933.1. Section 2933.1 provides:

"(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

"....."

"(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a)."

Section 2933.1 applies to defendants whose current offense is among those listed in section 667.5, subdivision (c). Defendant was found guilty of attempted murder, which is a violent felony pursuant to section 667.5, subdivision (c)(12), making section 2933.1 applicable. Accordingly, we hold that defendant is entitled to 53 days of good conduct credits or 15 percent of the 357 days he served before sentencing.

DISPOSITION

The superior court is directed to prepare an amended abstract of judgment reflecting an award of 357 days of custody credit and 53 days of good conduct credit pursuant to Penal Code section 2933.1. The clerk shall forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

MOSK, J.