Filed 6/13/14 P. v. Kol

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. SORPORN D. KOL et al., Defendants and Appellants.	B243664 (Los Angeles County Super. Ct. No. TA111652)
THE PEOPLE, Plaintiff and Respondent, v. SOPHORN J. MOEUM, Defendant and Appellant.	B246888

APPEALS from the judgments of the Superior Court of Los Angeles County. Eleanor J. Hunter and Paul A. Bacigalupo, Judges. Affirmed as modified.

Chris R. Redburn, under appointment by the Court of Appeal, for Defendant and Appellant Sorporn D. Kol.

Eric R. Larson, under appointment by the Court of Appeal, for Defendant and Appellant Sophorn J. Moeum.

Charlotte E. Costan, under appointment by the Court of Appeal, for Defendant and Appellant Chendareth T. Meas.

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

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These appeals arise from an armed robbery at an auto shop in Compton that resulted in three victims being shot, two fatally. An amended information was filed charging seven accomplices with two counts of first degree murder, one count of attempted murder, one count of assault with a firearm, five counts of robbery, along with special allegations, and several counts against individual defendants for being a felon in possession of a firearm. Trial by jury was bifurcated, with four of the defendants being tried first. Three of those tried first and found guilty bring these appeals. Defendant and appellant Sophorn J. Moeum was convicted along with defendants and appellants Sorporn D. Kol, and Chendareth T. Meas, but the trial court declared a mistrial of the count 2 murder conviction as to Moeum due to a problem with the verdict forms. Moeum was again convicted of murder in the second trial. This court, on its own motion, consolidated for purposes of oral argument and decision, appeal No. B243664 (separate notices of appeal filed by Moeum, Kol and Meas,) and case No. B246888 (filed by Moeum to appeal the conviction in his second trial).[1]

In appeal No. B243664, defendant Moeum contends (1) his custodial statement to detectives was involuntary under both the federal and state Constitutions and its admission into evidence was prejudicial; (2) his sentence on count 15 for assault with a firearm must be modified to strike the sentence on the firearm enhancement under Penal

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[1] Defendant Moeum also filed two petitions for habeas corpus (B248220 & B250584) which we resolve by way of separate orders.

Code section 12022, subdivision (a)(1)[2] because "arming" is an element of the substantive offense; (3) his sentence on count 12 for unlawful possession of a firearm by a felon must be stayed pursuant to section 654 because he was punished for the act of constructive possession of the firearms in connection with the firearm enhancement terms imposed on counts 1, 5, 7, 8, 9, 14 and 15; (4) the victim restitution order must be modified to reflect the court's oral pronouncement of joint and several liability, not the erroneous reference to joint and separate liability reflected in the abstract of judgment; and (5) the parole revocation fine must be stricken in light of the fact he was sentenced to life without the possibility of parole.

Defendant Kol contends (1) a redacted version of his custodial statement to detectives was improperly admitted as the redactions resulted in a prejudicial distortion and misrepresentation of his role in the incident; (2) he was denied his constitutional right to confront and cross-examine witnesses by the erroneous admission of the statements of defendants Meas and Moeum; (3) it was error to impose restitution at a hearing in which Kol was not present; (4) his sentence on count 5 must be modified to reflect the court's oral pronouncement of life with the possibility of parole, not without parole as erroneously reflected in the abstract of judgment; and (5) the parole revocation fine must be stricken in light of his sentence of life without the possibility of parole on counts 1 and 2.

Defendant Meas contends (1) the court committed prejudicial instructional error by refusing to instruct on accessories after the fact; (2) there was insufficient evidence supporting Meas's culpability as an aider and abettor to the robberies and resulting murders; (3) his sentence is cruel and unusual within the meaning of the Eighth Amendment, as well as state law; and (4) the parole revocation fine must be stricken in light of his sentence of life without the possibility of parole.

All three defendants joined in each other's respective arguments.

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[2] All further undesignated section references are to the Penal Code, unless otherwise stated.

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In appeal No. B246888, defendant Moeum contends his conviction resulting from his retrial on count 2 must be reversed for the same reason he argued for reversal of his convictions in appeal No. B243664, i.e., the erroneous admission of his involuntary custodial statement. Moeum further contends the $240 restitution fine imposed pursuant to section 1202.4 must be stricken as in excess of the statutory maximum in light of the fact the court imposed the statutory maximum restitution fine in the first trial.

We conclude several sentencing errors require partial modification of the sentences imposed against all three defendants. We therefore modify the judgments accordingly and direct the superior court to make appropriate modifications to the abstracts of judgment. As to the balance of the defendants' contentions, we find no prejudicial errors and therefore affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of April 5, 2010, a group of coworkers and friends gathered at Custom City Auto Sales on Long Beach Boulevard in Compton to watch a college basketball playoff game. Around closing time, at least four males entered the shop and demanded money from the employees. During the course of the robbery, employees Vance Dean and Lejon Robins were fatally shot. Mark Richardson was also shot, but survived. After taking money and personal items from five of the victims, the robbers fled the scene in a van. They were apprehended a short distance away after a brief pursuit by numerous deputy sheriffs, including a foot chase that ensued after the suspects abruptly pulled the van over near an alley, got out and started running. Seven individuals were arrested: Defendants Moeum, Kol, and Meas and codefendants John Dinkins, Devin Lewis, Paul Jordan, and Anthony McLaurin.[3] An eighth suspect was apprehended but died from an apparent heart attack shortly after being taken into custody.

The operative information contained the following allegations: counts 1 and 2, pled against all seven defendants, for the first degree murders of Mr. Dean and Mr. Robins, respectively (§ 187, subd. (a)); count 5, pled against all seven defendants, for

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[3] Codefendants Dinkins, Lewis, Jordan and McLaurin are not parties to this appeal.

the attempted first degree murder of Mr. Richardson (§§ 187, subd. (a), 664, subd. (a)); counts 6, 7, 8, 9 and 14, pled against all seven defendants, for the second degree robberies of Melvin "Jackie" Hoard, Kimberly Carnes, Milton Arrington, Shawn Simon, and Gary Samuel, respectively (§ 211); count 10, pled against codefendant Lewis only, for being a felon in possession of a firearm (§ 12021, subd. (a)(1)[4]); count 11, pled against codefendant Jordan only, for being a felon in possession of a firearm (§ 12021, subd. (a)(1)); count 12, pled against defendant Moeum only, for being a felon in possession of a firearm (§ 12021, subd. (a)(1)); count 13, pled against codefendant Dinkins only, for being a felon in possession of a firearm (§ 12021, subd. (a)(1)); and count 15, pled against all seven defendants, for the assault with a firearm of Christopher Williams (§ 245, subd. (a)(2)).[5]

Robbery-murder special-circumstance and multiple-murder special-circumstance allegations were alleged as to counts 1 and 2 (§ 190.2, subd. (a)(3), (17)). It was also specially alleged as to the murder counts, the attempted murder count, the robbery counts and the assault count that a principal was armed with a firearm during the commission of said offenses within the meaning of section 12022, subdivision (a)(1). Personal firearm use, prior strike and prior prison term allegations were pled as to codefendants Dinkins, Jordan, Lewis and McLaurin.

Defendants Moeum, Kol and Meas pled not guilty to all charges, and denied the special allegations. It was determined Moeum, Kol, Meas and codefendant Dinkins would be tried first in a joint trial (which began in June 2012), and codefendants Lewis, Jordan and McLaurin would be tried separately thereafter.

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4 Former section 12021 was reenacted, without substantive change, as section 29800. We use "section 12021" to be consistent with the pleadings and argument of the parties.

5 The operative amended information did not contain counts 3 or 4.

1. The Trial Testimony

Mr. Arrington, an employee of Custom City Auto Sales, testified to the events that occurred on the evening of April 5, 2010. He and several other employees and friends were having a small party at the store to watch the college basketball playoffs. Around closing time, Mr. Arrington was talking to the manager of the shop, Mr. Hoard, when three African-American males entered the store. Mr. Hoard turned to see what they wanted, and one of the three men, identified in court by Mr. Arrington as codefendant Dinkins, pulled a gun.

Both Mr. Arrington and Mr. Hoard ran to the front of the store, but could not get out because the front door was locked. Codefendant Dinkins, who was pointing a semiautomatic handgun at them, ordered them to sit on the ground. Both of them complied and turned over the money they had in their pockets. Dinkins repeatedly asked where "the box" was, but they did not know what he meant.

Mr. Arrington saw a fourth person, another dark-skinned male, who had not entered the store originally, come in carrying a shotgun. After initially heading in their direction, the individual with the shotgun turned toward the back of the store. Mr. Arrington heard a gunshot. Codefendant Dinkins headed toward the sound of the gunshot, while Mr. Arrington and Mr. Hoard made another effort, this time successful, to escape out the front door. From outside, Mr. Arrington heard more gunshots coming from inside the store. Mr. Arrington saw his girlfriend, Martina Holmes, pulling up in her car. He got in and told her they had just been robbed.

As Mr. Arrington and Ms. Holmes started to drive away from the store, Mr. Arrington noticed a van coming out of the store's parking lot. He and Ms. Holmes traveled in the same direction as the van for a short while, and attempted to "flag down" one of the patrol cars that appeared to be heading to the store. Mr. Arrington and Ms. Holmes returned to the store. They went inside and found Mr. Robins and Mr. Dean (nicknamed "Bird"), dead from gunshot wounds. Mr. Arrington also found Mr. Richardson outside, shot in the stomach but alive. The police and paramedics arrived and one of the officers asked Mr. Arrington to identify several suspects who had been

caught nearby. Mr. Arrington was taken to a Rite Aid store a short distance away and was shown several possible suspects. He identified the individuals he had seen inside the store.

Ms. Holmes testified that around 8:00 p.m., she drove to Custom City Auto Sales intending to pick up Mr. Arrington at the end of his shift and go out for the evening. When she pulled into the parking lot at the store, she saw a van parked close to the back door, facing her direction. Ms. Holmes drove past the driver's side of the van. She did not see anyone inside. She noticed Mr. Richardson lying on the ground. There was a spot on the stomach-area of his white shirt.

At that point, Ms. Holmes saw four to five dark-skinned males running out of the back door of the store. She saw that two of them were carrying handguns. They started to get into the back of the van. Ms. Holmes was scared and just wanted to get away, so she drove out of the parking lot. She saw Mr. Arrington on the sidewalk in front of the store and picked him up. He told her the store was being robbed. Ms. Holmes testified substantially consistently with Mr. Arrington's testimony about what occurred thereafter, except that Ms. Holmes recalled the deputies taking her to two separate locations to identify potential suspects, one near the Rite Aid Store and one on a nearby side street. Ms. Holmes confirmed in court that one of the individuals she identified was codefendant Dinkins. She also explained she did not recall seeing anyone running away from the scene on foot.

Ms. Carnes, another employee, testified she was in the middle section of the store getting ready to have something to eat when the robbery began. Mr. Robins, Mr. Simon and Mr. Samuel were chatting nearby. Ms. Carnes heard some sort of "ruckus" near the back of the store. She saw Mr. Richardson struggling with someone. She told Mr. Robins what was happening, and he told her to duck behind the display counter.

Ms. Carnes heard a lot of yelling and several different-sounding gunshots. After the gunshots stopped, two African-American males, one dark-skinned with braids and wearing a "beanie" and a taller, lighter-skinned individual, approached her where she was still hiding behind the counter. They pointed guns at her. The one with the braids held a

long-barreled gun with both hands, and the other one had a silver handgun. The lighter-skinned male went through her pockets, and took her keys and a "small chain." She saw them rummage through the display counter and then one of them said he heard sirens, so they ran out the back of the store. Ms. Carnes came out from behind the counter and saw Mr. Robins, Mr. Dean and Mr. Richardson had been shot. When the deputies arrived, they took her to a nearby location and asked her to view five to six individuals and she identified two. She said codefendant Dinkins was one of the individuals in the store with "the braids."

Mr. Simon testified substantially consistently with Ms. Carnes about how the incident initially unfolded. He also said he saw Mr. Robins get shot, and was splattered with his blood. He therefore tried to "play dead." Two individuals, one with braids and a bald male with a tattoo, poked at him and also at Mr. Samuel, with guns, not believing they were dead. Mr. Samuel pled for his life. The bald male took Mr. Simon's watch from his wrist. Mr. Simon said he spoke with the deputies after they arrived and tried to give accurate descriptions of the suspects. He was taken to a nearby Rite Aid store and identified several individuals, including the bald male with the tattoo and the one with the braids. Mr. Simon testified in court the one with the braids was codefendant Dinkins.

Mr. Samuel, a friend of the store employees, testified he had been invited to watch the playoffs and have something to eat. They were getting ready to watch the game when he heard a loud bang. He saw Mr. Robins jump up and attempt to close the door to the back of the store. -He appeared to be struggling, as if someone was pushing on the door from the other side. Mr. Samuel then heard what he believed to be gunshots. Mr. Robins fell backward from the door. Mr. Samuel did not have a good vantage point as he was hiding, but he saw someone going through Mr. Robins's pockets. He heard multiple voices. Mr. Samuel also heard Ms. Carnes pleading not to be shot and he saw several men pulling at Mr. Simon, telling him to quit playing dead and asking where "the box" was. Mr. Samuel saw at least one man, who had a tattoo on his neck, pointing a handgun at Mr. Simon. The robbers then noticed Mr. Samuel and pointed their guns at him. He pleaded with them and handed over about $600 or $700 from his pocket. He heard other

voices telling the robbers "we gotta go." Mr. Samuel was unable to identify anyone in court, other than the man with the tattoo from a photograph.

Mr. Richardson, a friend of several of the store employees, had stopped by that evening to talk to Mr. Hoard. He was sitting in the back room of the store near the back door that opened onto the parking lot. As Mr. Richardson was saying goodbye and turning to leave, several males, who he believed to be African-American, entered the store. One of them started "rastling" with "Bird" (Mr. Dean), and two others ran past him down the hallway, toward the front of the store. He knew something was not right and tried to leave out the back door, but something hit his back, causing him to fall. Mr. Richardson got up and jumped over Mr. Dean who was on the ground at that point. When Mr. Richardson opened the back door to leave, he saw another male standing right outside the door. He was short, with light skin and short hair. He was wearing a white shirt and holding a silver gun. He pointed the gun at Mr. Richardson and shot him in the stomach.

As Mr. Richardson lay on the ground, he heard more gunshots of different calibers coming from inside the store. He also noticed a van parked near the back door. The engine appeared to be running because there were amber-colored lights on and white smoke coming from the exhaust pipe. Mr. Richardson then heard the sliding door of the van being opened and closed and the van pulling away. Mr. Hoard and Mr. Arrington eventually came out and stayed with him until the paramedics arrived. Mr. Richardson was in the hospital for over 11 months and had 12 surgeries as a result of the gunshot wounds he received.

Mr. Williams, a store employee, was in the back room with Mr. Dean and Mr. Richardson when several African-American males entered the store through the back door. He saw they were wearing dark-colored jackets, and at least one was wearing a beanie. One of the males asked about buying some weed, and Mr. Hoard said they did not sell that. Some sort of struggle started and Mr. Williams saw one of the males pull a gun on Mr. Dean. Mr. Williams jumped on one of the other males and they both fell into a tire stand, knocking it over. Things happened quickly and Mr. Williams heard multiple

gunshots. He tried to hide behind one of the other tire stands. At some point, one of the males pointed a gun at him and told him not to move. After the robbers fled the store, Mr. Williams escaped out the front door. Mr. Williams was unable to identify anyone in court.

Cherng Lee, a deputy with the Los Angeles County Sheriff's Department, was working patrol that evening with Deputy Peter Tovar. Sometime after 8:00 p.m., they received a radio dispatch of a robbery in progress, with gunshot victims, and suspects reportedly fleeing in a green Astro van. Numerous deputies responded to the call.

A short distance away from Custom City Auto Sales, Deputy Cherng Lee saw a green van, with its headlights off, driving down Bullis Road. Deputy Tovar made a U-turn and pulled in behind the van. The van pulled over to the side momentarily and two males wearing hoodies and black clothing jumped out and started running. Deputy Lee immediately gave chase and detained one of them within 10 or 15 feet. He identified defendant Moeum as the individual he caught trying to run away from the van. Deputy Lee testified Moeum had a partially torn latex glove on one wrist, and a red Samsung cell phone in one of his pockets at the time of his detention.

Deputy Tovar testified substantially consistently with Deputy Cherng Lee about the events leading up to Deputy Lee's capture of defendant Moeum. Deputy Tovar further explained that after making sure Deputy Lee was alright, Deputy Tovar continued to pursue the van after it abruptly pulled back into traffic. Deputy Tovar followed the van southbound on Bullis Road, and then eventually braked quickly and stopped again near an alley. At that point, the driver of the van jumped out and ran, as did three other males from the passenger side of the van. Deputy Tovar kept an eye on the van and broadcast the direction the suspects were running. Deputy Tovar identified defendant Meas, in court as the suspect he saw running from the driver's side of the van.

Deputy Timothy Lee testified he and his partner saw a van matching the general description of the suspect vehicle being chased by a patrol car, so they made a U-turn and pulled in behind the first patrol car. They briefly lost sight of the van after it made a turn, but heard over the radio the van had stopped near an alley, and several suspects had fled

the vehicle on foot. Deputy Timothy Lee saw an individual, wearing a red baseball cap, running through the alley. He and his partner ordered him to stop and the individual complied. Deputy Timothy Lee identified defendant Kol in court as the individual he detained.

Deputy Timothy Lee also saw another suspect jumping over fences and running through several yards in the vicinity where he detained defendant Kol. He and his partner detained that individual and placed him in a separate patrol car from Kol. The second suspect died that evening from a heart attack. In looking for possible evidence in the area where he detained Kol, Deputy Lee found two cell phones, as well as two used latex gloves.

Deputy Daryl Gaunt of the canine unit was called to the scene to assist with locating suspects. With the assistance of his canine partner, Deputy Gaunt located and detained defendant Meas from under the crawl space of a house.

Deputy Scott Lawler attested to his participation in the investigation the night of the incident, and his detention of codefendant Jordan from the roof of a house. Jordan's cell phone was booked into evidence.

Ken Perry, a homicide detective, testified he and his partner, Detective Gary Sloan, were the lead investigators on the case. Because of the scope of the investigation and number of victims, additional investigative teams helped process the main crime scene at the store, as well as the van and surrounding areas where the suspects were apprehended. Numerous items of clothing, gloves, and hats, as well as four guns, were recovered from the back of the van. Additional evidence was recovered from along the alley and nearby areas where the suspects fled, including multiple used latex gloves, a black and white sneaker, and several cell phones. Money was recovered from some of the jackets.

Detective Perry obtained records related to the cell phones recovered from defendant Moeum and codefendant Jordan. The records showed Jordan in Moeum's phone contact list as "Wino" and 20 phone calls between the two phones in the two hours leading up to the April 5, 2010 incident. Further analysis performed with the assistance

of the Federal Bureau of Investigation confirmed, from cell tower data, that the phone calls took place in the vicinity of Custom City Auto Sales.

Detective Perry further testified to his interviews, with Detective Sloan, of defendants Moeum, Meas and Kol on April 6, 2010, within 24 of the incident. Detective Perry explained that codefendant Dinkins was arrested and interviewed in July 2010, as he had not been apprehended with the other suspects on the night of the incident. Transcripts of portions of the recorded interviews of Moeum, Meas, Kol and, and the later recorded interview of Dinkins, were played for the jury, following admonitions by the court that each defendant's statement could only be considered as against the defendant making the statement, but for no other purpose. A portion of the holding cell conversation between Meas and Dinkins was also played for the jury.

Wayne Holston, a homicide detective, testified to his efforts in processing the van, including the recovery of a large metallic sign stating "Time Warner Cable Communications," on which was written "Chendareth Meas." Detective Holston also described the guns found in the van, specifically a semiautomatic Colt pistol, a semiautomatic rifle with the barrel sawed off, a chrome Lorcin semiautomatic pistol, and a Smith & Wesson revolver. Two wallets and other papers were also recovered from the van, containing the names of defendants Moeum and Kol.

Kristina Fritz, a senior criminalist with the sheriff's department crime lab, testified to the results of her analyses of the gunshot residue (GSR) samples collected from the hands of both defendants Moeum and Meas. She confirmed that both samples tested positive for GSR. Ms. Fritz explained that GSR is projected approximately three feet in all directions from the barrel of a gun when the bullet is expelled. She confirmed that wearing latex gloves would, in most circumstances, block GSR from being deposited directly on the hands. On cross-examination, she conceded her test results cannot confirm that a person with GSR on his or her hands actually fired a weapon. The presence of GSR can also be the result of someone being near a gun when it is fired, or the result of a transfer from another individual who had fired a weapon.

Tracy Peck, a criminalist and firearms examiner with the crime lab, testified that, based on the bullet fragments and shell casings recovered from the scene and from the victims, four different weapons, consistent with those found in the van, were fired at the store.

Wilson Vong, a senior criminalist with the crime lab, testified to the collection of blood and DNA samples from evidence retrieved from the van and crime scene, including the chrome Lorcin pistol, multiple latex gloves (one of which had the wrist portion torn away), black cloth gloves, a long-sleeved white T-shirt, a black leather jacket, a blue jacket, several ski masks, and a black baseball cap.

Cristina Gonzalez, a senior criminalist with the crime lab, testified to the DNA analyses she performed on various items of evidence. The blood found on the Lorcin pistol was confirmed as a match to Mr. Robins's DNA, as was a sample of blood from inside the van. The DNA samples taken from defendants Moeum, Kol, and Meas matched samples taken from several of the latex gloves. Moeum's DNA was also found on the black baseball cap. The blood sample taken from the long-sleeved white T-shirt which Kol had been wearing matched Mr. Robins's DNA. Ms. Gonzalez also attested to the DNA on other items of evidence which matched other codefendants.

2. The Custodial Statements by Defendants

Outside the presence of the jury, the court and counsel discussed the out-of-court statements made by the defendants that the prosecutor wished to introduce into evidence. The court first addressed the brief statement by codefendant Dinkins to Detectives Sloan and Perry, as well as his recorded conversation with defendant Meas in a holding cell. No objections were raised by defendant Moeum, Meas or Kol as to either statement.

The court then moved on to defendant Moeum's custodial statement. Moeum objected generally to the introduction of the entirety of his statement, stating no specific grounds. When the court inquired further of counsel, the following colloquy occurred:

"[MOEUM'S COUNSEL]: I'm just objecting on all possible legal and factual grounds.

"THE COURT: Well, I think you have to be a little bit more specific than that.

"[MOEUM'S COUNSEL]: Those are my objections.

"THE COURT: Okay. Well, based on that, then that's overruled, and those are coming in." Counsel for codefendant Dinkins then raised an objection to Moeum's statement under *Bruton v. United States* (1968) 391 U.S. 123 (*Bruton*) and *People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*), as well as a confrontation clause objection under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Counsel for defendants Kol and Meas joined. Moeum's counsel, shortly thereafter, joined in those objections as well.

The court overruled the defense objections, finding the prosecutor's redacted version reasonably and "carefully . . . excise[d] any type of reference to the identity of any other [defendant]," and the portions presented were relevant to both identity and intent.

As to defendant Kol's custodial statement, Kol's counsel objected on the grounds that if the proposed redacted version was to be admitted, the court should admit the entire unredacted statement because the prosecutor's redacted version changed and distorted the context of what Kol said. If the court was not inclined to allow the whole statement, then counsel objected to any of Kol's statement being admitted. The court made some inquiries of the prosecutor about why certain portions were left out that did not implicate accomplices but which gave more context to Kol's statements. It was agreed certain additional portions of the transcript would be included, but Kol maintained his objection that the whole statement should come in if any of it came in, which the court rejected. Counsel for defendants Moeum, Meas and codefendant Dinkins objected to the entirety of Kol's statement without stating a specific ground.

As to defendant Meas's statement, his counsel raised two specific objections to the omission of portions of the redacted transcript. The court found the objections had merit and instructed that those portions be added. Meas had no further objections. Counsel for the remaining defendants joined in codefendant Dinkins's counsel's assertion of *Crawford* and *Aranda*/*Bruton* objections. Counsel for defendant Moeum raised a specific objection to one portion of Meas's statement being left out, and the court overruled the objection without prejudice.

As for the conversation between defendant Meas and codefendant Dinkins while in a holding cell, the court deferred a ruling. When the matter was taken up again, counsel for defendants Moeum and Kol chose not to participate, conceding no objections. Counsel for Dinkins and Meas, in discussions with the court, agreed to various redactions being made to the transcript of the conversation.

In defendants Moeum's, Kol's and Meas's custodial statements, each defendant conceded being in the van, which was Meas's work vehicle, that several African-American males were picked up before heading to the store, and that they knew the plan was to rob some people of "weed." All three denied ever having or using a gun. We defer a more detailed discussion of the custodial statements to parts 1, 2 and 3 of the Discussion below.

3. The Verdicts and Sentencing

At the close of the prosecution's case, defendant Moeum and codefendant Dinkins stipulated that on the date of the incident, each of them had suffered a prior felony conviction. All four defendants exercised their right not to testify. Following closing arguments and deliberations, the jury returned their verdicts.

The jury found defendant Moeum guilty of the first degree murder of Mr. Dean and found true the robbery-murder special-circumstance allegation. The jury also found Moeum guilty of the attempted first degree murder of Mr. Richardson, the assault with a firearm of Mr. Williams, the second degree robbery counts regarding Ms. Carnes, Mr. Arrington, Mr. Simon and Mr. Samuel, and for being a felon in possession of a firearm. The jury found true the principal armed with a firearm allegation as to all of those counts. (Counts 1, 5, 7, 8, 9, 12, 14, 15.) The jury also returned a signed guilty verdict form as to the first degree murder of Mr. Robins in count 2, finding true the special circumstance, but that verdict was never read on the record or affirmed by the jury. The jury did not return a verdict form as to count 6. The jury was discharged before the error in taking the verdicts on these counts came to light.

The jury found defendant Kol guilty of the first degree murders of Mr. Dean and Mr. Robins, and found true the robbery murder special circumstance allegations as to both

murders. The jury also found Kol guilty of the attempted first degree murder of Mr. Richardson, the assault with a firearm of Mr. Williams, and the five counts of second degree robbery. The jury found true the principal armed with a firearm allegation stated as to all counts. (Counts 1, 2, 5, 6, 7, 8, 9, 14 & 15.)

The jury found defendant Meas guilty of the first degree murders of Mr. Dean and Mr. Robins, and found true the robbery-murder special-circumstance allegation as to the murder of Mr. Robins. The jury did not return a verdict as to the robbery-murder special circumstance as to the murder of Mr. Dean. The jury also found Meas guilty of the attempted first degree murder of Mr. Richardson, the assault with a firearm of Mr. Williams, and the five counts of second degree robbery. The jury found true the principal armed with a firearm allegation stated as to all counts. (Counts 1, 2, 5, 6, 7, 8, 9, 14 & 15.)

Codefendant Dinkins was acquitted on all counts.

As to defendant Moeum, the court imposed sentence as follows: count 7 (robbery), the high term of five years, plus one year for the principal with a firearm enhancement; counts 8, 9 and 14 (robbery), consecutive terms of one year four months, consisting of one-third the midterm on both the offense and the firearm enhancement; count 15 (assault with a firearm), a consecutive term of one year four months, consisting of one-third the midterm on both the offense and the firearm enhancement; count 12 (felon in possession), a consecutive eight-month term, one-third the midterm; count 5 (attempted murder), a consecutive indeterminate term of life with the possibility of parole, plus one year for the firearm enhancement; and count 1 (murder with robbery-murder special circumstance), a consecutive indeterminate term of life without the possibility of parole, plus one year for the firearm enhancement.

The court imposed various fines and fees, and awarded defendant Moeum 879 days of custody credits. Restitution was ordered, joint and several with the other defendants, in the amount of $10,736.86 to the State Victims' Compensation Board, $7,315.90 to Mr. Dean's surviving family, and $10,000 to Mr. Robins's surviving family.

After considering briefing and argument by the parties regarding the irregularities in the verdicts received for defendant Moeum, the court dismissed count 6 (robbery) and granted a mistrial as to count 2 (murder of Mr. Robins).

As to defendant Kol, the court imposed sentence as follows: count 6 (robbery), the midterm of three years, plus one year for the principal with a firearm enhancement; counts 7, 8, 9 and 14 (robbery), consecutive terms of one year four months, consisting of one-third the midterm on both the offense and the firearm enhancement; count 15 (assault with a firearm), a consecutive term of one year, one-third the midterm; count 5 (attempted murder), a consecutive indeterminate term of life with the possibility of parole, plus one year for the firearm enhancement; and counts 1 and 2 (murder with robbery-murder special circumstance), consecutive indeterminate terms of life without the possibility of parole.

The court imposed various fines and fees, and awarded defendant Kol 865 days of custody credits. After a short recess, restitution was ordered, joint and several with the other defendants, in the amounts set forth above. The transcript reflects that Kol's counsel was present at the resumed proceeding, but Kol was not.

As to defendant Meas, the court imposed sentence as follows: count 6 (robbery), the midterm of three years, plus one year for the principal with a firearm enhancement; counts 7, 8, 9 and 14 (robbery), consecutive terms of one year four months, consisting of one-third the midterm on both the offense and the firearm enhancement; count 15 (assault with a firearm), a consecutive term of one year four months, consisting of one-third the midterm on both the offense and the firearm enhancement; count 5 (attempted murder), a consecutive indeterminate term of life with the possibility of parole, plus one year for the firearm enhancement; count 1 (murder), a consecutive term of 25 years to life, plus one year for the firearm enhancement; and count 2 (murder with robbery-murder special circumstance), a consecutive indeterminate term of life without the possibility of parole.

The court imposed various fines and fees, and awarded defendant Meas 912 days of custody credits. Restitution was ordered, joint and several with the other defendants, in the amounts set forth above.

All three defendants filed timely appeals.

4. The Retrial of Defendant Moeum on Count 2

In October 2012, defendant Moeum was retried on count 2 (the murder of Mr. Robins). Numerous witnesses from the first trial testified again to substantially the same facts described above. Moeum's redacted custodial statement was once again played for the jury. No objections of any kind were stated on the record as to the admission of Moeum's statement.

The jury found defendant Moeum guilty of the first degree murder of Mr. Robins, and found true the robbery-murder special circumstance and the principal with a firearm allegation. The court sentenced Moeum to life without the possibility of parole, plus a consecutive one-year term for the firearm enhancement. The court stated that in light of the multiple victims, the sentence would run consecutive to the terms previously imposed by the court in the first trial. The court awarded Moeum 1,032 days of custody credits.

The court imposed a court construction fund fee and a court security fee. As for restitution, the court ordered: "I am aware that the court previously imposed a $10,000 victim restitution fund fine and in this matter I will impose the minimum, because I believe the maximum would have been imposed previously; therefore, I impose $240. No parole revocation fine is hereby imposed." No specific objection was stated on the record to the imposition of the restitution fund fee. However, counsel previously stated a lengthy objection on the record to proceeding with sentencing at that time, asserting the need for additional time to prepare for the hearing and requesting a continuance. The court denied the request and proceeded with sentencing over defendant Moeum's objection.

Defendant Moeum filed a timely appeal (case No. B246888). By order dated January 23, 2014, this court, on its own motion, consolidated for purposes of oral argument and decision only, Moeum's appeal from the retrial with the pending appeal in case No. B243664.

DISCUSSION

1. The Admission of Defendant Moeum's Custodial Statement

Defendant Moeum argues his April 6, 2010 statement to Detectives Sloan and Perry was coerced by misleading statements and implied promises that the process would go better for him if he would admit the robbery and explain he had no intent to kill anyone. Moeum contends the improper statements by the detectives resulted in his inculpatory admissions regarding participation in the robbery, which in turn subjected him to culpability on the murders under a felony-murder theory, and thus should not have been admitted. We do not agree there was any coercion as alleged.

It is well established a prosecutor may not use a defendant's involuntary admission or confession. (*People v. Holloway* (2004) 33 Cal.4th 96, 114 (*Holloway*); see also, *People v. Neal* (2003) 31 Cal.4th 63, 79 (*Neal*) [the due process clause makes inadmissible any involuntary statement obtained by coercion].) It is the prosecutor's burden to establish, " 'by a preponderance of the evidence, that a defendant's confession was voluntary. . . . [¶] Under both state and federal law, courts apply a "totality of circumstances" test to determine the voluntariness of a confession. . . . On appeal, the trial court's findings as to the circumstances surrounding the confession are upheld if supported by substantial evidence, but the trial court's finding as to the voluntariness of the confession is subject to independent review. [Citations.] In determining whether a confession was voluntary, "[t]he question is whether defendant's choice to confess was not 'essentially free' because his will was overborne." ' [Citation.]" (*Holloway*, *supra*, at p. 114; see also *Withrow v. Williams* (1993) 507 U.S. 680, 689.)

Respondent urges us to find defendant forfeited any argument by failing to object in the trial court. " 'No procedural principle is more familiar . . . than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.' [Citation.]" (*United States v. Olano* (1993) 507 U.S. 725, 731; see also *People v. Tafoya* (2007) 42 Cal.4th 147, 166 [confrontation clause violation may be

forfeited by failure to object in trial court]; accord, *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1028, fn. 19.)

During the court's discussion with counsel about the various statements by defendants the prosecutor sought to introduce as evidence, counsel for defendant Moeum objected generally to the introduction of Moeum's statement. The court asked "based on what?" Counsel responded: "There's a peculiar question in my mind as it relates to – well, not so much his statement. I have a problem when it's going to get down to Meas." The court said okay, but asked counsel to first address any objection to Moeum's statement. The following colloquy occurred.

"[MOEUM'S COUNSEL]: I'm just objecting on all possible legal and factual grounds.

"THE COURT: Well, I think you have to be a little bit more specific than that.

"[MOEUM'S COUNSEL]: Those are my objections.

"THE COURT: Okay. Well, based on that, then that's overruled, and those are coming in."

" 'Evidence Code section 353 does not exalt form over substance.' [Citation.] The statute does not require any particular form of objection. Rather, 'the objection must be made in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on which exclusion is sought, and to afford the People an opportunity to establish its admissibility.' [Citation.] *What is important is that the objection fairly inform the trial court, as well as the party offering the evidence, of the specific reason or reasons the objecting party believes the evidence should be excluded*, so the party offering the evidence can respond appropriately and the court can make a fully informed ruling." (*People v. Partida* (2005) 37 Cal.4th 428, 434-435, italics added.)

Defense counsel's objection based on "all possible legal and factual grounds" did not fairly inform the court or the prosecutor that defendant Moeum believed his custodial statement was involuntary and not properly admitted on that specific basis. Counsel's joinder in cocounsels' objections under *Crawford* and *Aranda*/*Bruton* also did not inform

the court or the prosecutor of any objection based on involuntariness. The objection was therefore forfeited and may not be raised for the first time in this court.

However, we find that even if an objection had been timely and specifically raised by defendant Moeum, the trial court would have been well within its discretion in overruling it and admitting the statement as the record does not support Moeum's contention the statement was involuntary under applicable law. In both of Moeum's petitions for habeas corpus, his sole contention is that his trial counsel from both trials was ineffective for failing to properly raise an objection that his custodial statement was involuntary and inadmissible. We therefore address the merits of the voluntariness of Moeum's statement and dispose of his petitions by way of separate orders filed concurrently herewith.

"Voluntariness does not turn on any one fact, no matter how apparently significant, but rather on the 'totality of [the] circumstances.' [Citation.]" (*Neal, supra*, 31 Cal.4th at p. 79.) A reviewing court assesses voluntariness " 'in light of the record in its entirety, including "all the surrounding circumstances—both the characteristics of the accused and the details of the [encounter]" . . . .' [Citations.]" (*Id.* at p. 80.)

Defendant Moeum recites a litany of allegedly coercive statements made by the detectives during their hour-long interview of him. The first two challenged statements or passages occurred at the beginning of the interview, shortly after defendant was read his rights and the detectives explained they were investigating a double homicide and robbery that had occurred the night before. Moeum denied any involvement in the incident and claimed he had just been walking the streets looking for a job when the officers "grabbed [him] out from nowhere."

Detective Sloan responded by asking defendant Moeum if he had put in any applications anywhere. Moeum said "nah," "they wasn't hiring." Detective Sloan then made the first allegedly coercive statement, saying "[d]on't bullshit us." "There is your very life and freedom hanging in the balance." "I know you weren't looking for a job . . . last night. You know you weren't. Okay. . . . We been doing all our investigation all through the night, talking to witnesses, talking to people who saw what they saw. Alright.

There's video. There's people who saw you in the alleyway. Okay. There's people who saw you in the store. Alright. So let's get over that. Can we get past that?"

Defendant Moeum responded "[y]eah, we get past that." Detective Sloan went on, "[o]kay. What happened here? I know . . . where it starts off at. I know where it ends up, and I know what happens in between. But what I don't know is . . . what's going on with you in your head [d]uring all this craziness."

Defendant Moeum then admitted he had been in his cousin's van (defendant Meas) the previous night but nothing further. His statement is followed by a colloquy with the detectives which contains the second series of challenged statements.

"[DETECTIVE]: You keep lying to me and trying not to tell me shit, I'm gonna think you're a stone as[s] killer and I'm gonna think you went in there and killed those people on purpose. Okay?

"[MOEUM]: Yes, sir.

"[DETECTIVE]: So let's get fucking past this shit. You got it?

"[MOEUM]: Yes.

"[DETECTIVE]: Okay. I don't wanna have to pull teeth from you. I don't wanna have to make you tell me the truth. You should be begging me, telling me the truth, right?

"[MOEUM]: Yeah.

"[DETECTIVE]: Because it's your freedom.

"[MOEUM]: Yep.

"[DETECTIVE]: It's your life, alright?

"[MOEUM]: Yes, sir."

Neither of these exchanges was coercive. The detective's statements were at most exhortations to tell the truth and for defendant Moeum to explain his version of the incident. There were no misleading statements about the law or how it may have applied to Moeum's situation, and no promises of leniency of any kind were made, expressly or impliedly. As our Supreme Court has explained, " 'mere advice or exhortation by the police that it would be better for the accused to tell the truth when unaccompanied by

either a threat or a promise does not render a subsequent confession involuntary.' [Citation.]" (*Holloway*, *supra*, 33 Cal.4th at p. 115.)

At this point in the interview, defendant Moeum reiterated he was in defendant Meas's van, that Meas was driving, and defendant Kol, another cousin, was with them. He claimed to not know what was going on or where they were going. He said they eventually stopped to pick up three African-American males, who got into the back of the van, and they ended up at the auto shop in Compton. Moeum said he heard shooting from inside the store, which scared him so he ran off and did not know what happened.

Defendant Moeum argues the detectives continued to pepper their questioning of him with coercive statements, saying they believed he was a "stone ass killer"; that he needed to "get right," and to convince them he was not a "stone cold killer," and other similar statements. Detectives Sloan and Perry explained they had a lot of information from the other accomplices, some of whom said they thought they were only out to rob people of dope, or a car, but then it got "crazy." Moeum interjected it certainly "[did] get crazy." Nevertheless, he continued to insist he did not participate but took off running, on his own, when he heard gunshots inside the store.

Defendant Moeum also contends the detectives misleadingly urged him to admit the robbery. The detectives implored Moeum to just say, "[y]es, there was a call. Yes, I did get into a car. Yes, I knew we were going on a mission. Not a mission to kill somebody, a mission to jack somebody." The detectives also reminded Moeum that test results would come back from the gloves and other evidence and it would look bad for him if the results conflicted with his story. The detectives asked Moeum what he thought was going to happen that night. He explained he believed he was just going to tape people up. He thought it was just going to be "a lick" (a robbery), because "I had the tape."

The detectives said again that defendant Moeum should convince them he was not a part of killing the victims. Defendant Moeum agreed that killing people is more wrong "than just being around the guns." The detectives urged Moeum to tell them what really "went down," to not hold back on the "little shit," and they could reach "an

understanding." Moeum admitted seeing certain guns being passed around by the African-American males.

The following colloquy, *not challenged* by defendant, then took place:

"[DETECTIVE]: You understand it's a double murder?

"[MOEUM]: Yeah.

"[DETECTIVE]: What could happen with double murder?

"[MOEUM]: Life in prison.

"[DETECTIVE]: Ooh, life in prison. Please. Double murder. When you went there specifically to rob somebody. How about I get the Penal Code book out for you. Want the reality? What else could happen? You want the reality of this?

"[MOEUM]: Dead.

"[DETECTIVE]: You're dead? Why you dead?

"[MOEUM]: Life is in jail.

"[DETECTIVE]: Nah, it's called the death penalty. Double murder, during the course of a robbery."

After further discussion of defendant Moeum's tattoos which reflected his Cambodian ethnicity, he told the detectives he was going to tell them the "absolute truth." Moeum said "they" (his cousins Meas and Kol) got a call, they got in the van, and they all went to a cemetery where they picked up three African-Americans, one of whom was a friend of Kol's. The African-Americans had a backpack from which they took various guns and passed them around. Moeum said he put on gloves. When they arrived at the auto shop, the African-Americans jumped out and ran into the store, and Moeum almost immediately heard gunshots, so he took off running and threw the gloves and duct tape away as he ran. Moeum also identified some of the clothing the African-Americans were wearing and described one of the four guns as chrome-colored, and another one that looked like a "sawed off" shotgun or rifle. The detectives concluded the interview at 9:30 p.m., telling Moeum tests would be conducted on the collected evidence, they hoped he had told them the truth and they hoped things came out okay for him.

Defendant Moeum contends the detectives' failure to explain the law of felony murder made the pleas to Moeum to just explain the robbery more deceptive. Moeum, discussing isolated snippets of the interview, overstates the significance of the detectives' statements and alleged omissions. The transcript of the interview does not support Moeum's contention the detectives implied he would get more favorable treatment if he admitted to the robberies but did not intend for anyone to get hurt or killed. The detectives repeatedly implored Moeum to tell the truth, stated they believed he was lying when he denied knowledge of various aspects based on the information they had already learned in their investigation, and did suggest perhaps Moeum had only thought a robbery was planned. But at no time did they threaten Moeum or imply he could obtain any specific benefit if he admitted any particular aspect of the crimes.

Looking at the totality of the interview, its overall tone and context consisting of a back and forth dialogue lacking any obvious aggressiveness, none of the detectives' statements was coercive. Moreover, unlike *People v. Cahill* (1994) 22 Cal.App.4th 296, the case on which defendant Moeum heavily relies, at no point did Detective Sloan or Detective Perry provide a " 'materially deceptive' " statement about the law regarding homicides.[6]

Holloway is more on point. There, the defendant was facing two counts of murder, plus additional counts for attempted rape and burglary, as well as special circumstance allegations. The defendant "persisted" in his denials despite "long and vigorous questioning" by the detectives investigating the crimes. (*Holloway*, *supra*, 33 Cal.4th at p. 112.) The transcript of the defendant's interview reflected the detectives "repeatedly accused" the defendant of lying and suggested, multiple times, that perhaps the murders were accidental, that the defendant had been drinking, lost control and did not plan to kill the two sisters. (*Id*. at pp. 112-113.) When the defendant asked what difference that

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6 We do not discuss *People v. Westmoreland* (Feb. 5, 2013, A127394), the other case on which defendant Moeum relies, as it was ordered depublished by the Supreme Court following the granting of the Attorney General's petition for review, and the

would make, the detectives told him it would make a significant difference whether he acted intentionally or not, but did not specify how. (*Id*. at p. 113.) The detectives also told the defendant several times that the case was a "death penalty" case. (*Id*. at p. 115.) After those statements, the defendant then made various inculpatory admissions. (*Id*. at p. 114.)

The Supreme Court concluded the detectives' statements were not improper, finding they fell "far short of being promises of lenient treatment." (*Holloway, supra,* 33 Cal.4th at p. 116.) "The detectives did not represent that they, the prosecutor or the court would grant defendant any particular benefit if he told them how the killings happened. To the extent [the detective's] remarks implied that giving an account involving blackout or accident might help defendant avoid the death penalty, he did no more than tell defendant the benefit that might ' "flow[] naturally from a truthful and honest course of conduct" ' [citation], for such circumstances can reduce the degree of homicide or, at the least, serve as arguments for mitigation in the penalty decision." (*Ibid*.)

In rejecting the defendant's argument, the Supreme Court explained that "[n]o specific benefit in terms of lesser charges was promised or even discussed, and [the detective's] general assertion that the circumstances of a killing could 'make[] a lot of difference' to the punishment, while perhaps optimistic, was not materially deceptive. [¶] The line 'can be a fine one' [citation] between urging a suspect to tell the truth by factually outlining the benefits that may flow from confessing, which is permissible, and impliedly promising lenient treatment in exchange for a confession, which is not. But considering all the circumstances of this case, we do not believe the detectives crossed that line by mentioning a possible capital charge or suggesting that [the] defendant might benefit in an unspecified manner from giving a truthful, mitigated account of events." (*Holloway, supra,* 33 Cal.4th at p. 117.)

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transfer of the matter back to the First District to reconsider the Attorney General's petition for rehearing May 15, 2013, S209238.

Similarly here, we do not believe the detectives' statements constituted misleading assurances or otherwise crossed the line, even if they implied defendant might benefit in some unspecified manner from giving a truthful statement about his role in the robberies.

2. The Admission of Defendant Kol's Custodial Statement

Defendant Kol contends the court committed prejudicial error in admitting a *redacted* version of his custodial statement to Detectives Sloan and Perry. Kol argues it was error to refuse his request under Evidence Code section 356 to admit the whole statement (if it was to be admitted at all), because the prosecutor's redacted version distorted the meaning of his admissions and his role in the crimes. Kol also contends the admission of his statement was the "lynch pin" of the prosecutor's case against him and was therefore patently prejudicial. We are not persuaded.

As relevant here, Evidence Code section 356 provides that "[w]here part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party." Section 356 "permits the introduction of statements that are necessary for the understanding of, or to give context to, statements already introduced. [Citations.] But limits on the scope of evidence permitted under . . . section 356 may be proper when, as here, inquiring into the 'whole on the same subject' would violate a codefendant's rights under *Aranda* or *Bruton*." (*People v. Lewis* (2008) 43 Cal.4th 415, 458 (*Lewis*), overruled on other grounds as stated in *People v. Black* (2014) 58 Cal.4th 912, 919-920.)

Where, as here, a trial involves codefendants, exclusion of those portions of an admitted statement that inculpate other defendants does not run afoul of Evidence Code section 356. Here, the codefendants did raise *Aranda*/*Bruton* objections, and the transcript of Kol's interview was justifiably reviewed to redact any statements implicating them. Further, a review of Kol's lengthy interview shows the bulk of the statements not included in the version played at trial were either merely repetitive of portions that were included at Kol's request, or which directly implicated other codefendants. We find no fault in the trial court's exclusion of those statements. As in *Lewis*, such limitations on

the use of the entire interview "were permissible notwithstanding . . . section 356." (*Lewis, supra,* 43 Cal.4th at p. 458.)

Further, a comparison of the complete interview and the redacted portion presented to the jury does not support defendant Kol's contention that a distorted perception of his role was created. While the redacted statement obviously does not include the full scope of issues touched upon during the interview, the redacted version does not materially distort the nature of Kol's admitted role in the crimes. "The purpose of Evidence Code section 356 is to avoid creating a misleading impression." (*People v. Samuels* (2005) 36 Cal.4th 96, 130 [rejecting the defense argument it was error to refuse request to introduce complete interview where entire interview covered areas not at issue in portion offered by the prosecution].) No such misleading impression was created by Kol's redacted statement.

3. The *Crawford* and *Aranda/Bruton* Issues

Defendant Kol argues he was denied his constitutional right to cross-examine witnesses by the improper admission of the redacted custodial statements of defendants Moeum and Meas. Moeum and Meas joined in this contention. We are not persuaded.[7]

Under *Bruton*, the admission, at a joint trial, of a nontestifying defendant's confession that incriminates a codefendant violates the confrontation rights of the nondeclarant codefendant. (*Bruton, supra,* 391 U.S. at pp. 126-127; accord, *Aranda, supra,* 63 Cal.2d at pp. 528-530.) However, where facially incriminating references to a codefendant are redacted, the confrontation clause is not implicated. "[T]he Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence."

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[7] We reject respondent's contention defendants forfeited these arguments by failure to specifically object. A review of the transcript reveals the court methodically reviewed each statement with the participation of all counsel, soliciting comments and concerns about any particular portion to avoid problems under *Crawford* and *Aranda*/*Bruton*. On such a record, the fact defense counsel did not expressly invoke *Crawford* and *Aranda*/*Bruton* in asserting their objections cannot be said to amount to forfeiture.

(*Richardson v. Marsh* (1987) 481 U.S. 200, 211 (*Richardson*); see also *People v. Fletcher* (1996) 13 Cal.4th 451, 455-456 (*Fletcher*).)

A properly redacted testimonial statement may be admitted in a joint trial "even though the confession may incriminate [a nondeclarant codefendant] when considered in conjunction with other evidence properly admitted against the [codefendant]." (*Fletcher*, *supra*, 13 Cal.4th at p. 456.) Here, all three custodial statements by defendants Kol, Meas and Moeum were carefully redacted by the prosecutor, and further refined and modified in discussions with the court and all defense counsel as to the appropriate content. There are no facially incriminating direct references to any codefendant. Nor do any of the redacted statements replace the name or any direct reference to any codefendant with a blank or other symbol in a manner precluded by *Gray v. Maryland* (1998) 523 U.S. 185 (*Gray*). (*Gray*, at p. 195 ["considered as a class, redactions that replace a proper name with an obvious blank, the word 'delete,' a symbol, or similarly notify the jury that a name has been deleted are similar enough to *Bruton*'s unredacted confessions as to warrant the same legal results"]; accord, *Fletcher*, at p. 468.)

Portions of each redacted statement do raise the inference that defendants were acting as part of a larger group. However, the jury was aware, from extensive testimony, properly admitted, of the victim witnesses, the sheriff's department forensic witnesses, and deputy sheriffs that eight suspects were involved in the crimes (one of whom passed away), with seven suspects ultimately being arrested and charged, and physical evidence was linked to all suspects. The victim witnesses testified extensively to the African-American suspects being specifically involved in the shootings (as opposed to defendants Moeum, Kol and Meas who were cousins of Cambodian descent). Nothing in the redacted statements specifically implicates Moeum, Kol or Meas in a manner that offends the Sixth Amendment. We conclude the custodial statements were reasonably redacted consistent with *Richardson*, *Gray*, and *Fletcher*.

4. Defendant Moeum's Sentence on Count 12

Defendant Moeum contends his sentence for unlawful possession of a firearm should have been stayed pursuant to section 654 because he was already punished for that

same possession in the principal armed enhancements imposed on each of his robbery, attempted murder, and murder convictions. We disagree. We also reject respondent's contention Moeum forfeited this argument on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17.)

"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. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them." (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143 (*Jones*); see also *People v. Osband* (1996) 13 Cal.4th 622, 730-731.)

Section 654, subdivision (a) provides in relevant part: "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 was "intended to ensure that a defendant is punished 'commensurate with his culpability'. [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

To ensure punishment matches culpability, "[s]ection 654 therefore ' "precludes multiple punishment for a single act or for a course of conduct comprising indivisible acts. '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.' [Citation.]" [Citation.]' [Citations.] However, if the defendant harbored 'multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct. [Citation.]' [Citations.]" (*Jones*, *supra*, 103 Cal.App.4th at p. 1143.)

It is well established that where the evidence shows possession of a firearm by a felon "distinctly antecedent and separate" from the latter use of that firearm in another offense, punishment for each distinct and separate act is proper. (*Jones*, *supra*,

103 Cal.App.4th at pp. 1143-1144.) This is so because the "[c]ommission of a crime under section 12021 is complete once the intent to possess is perfected by possession. What the ex-felon does with the weapon later is another separate and distinct transaction undertaken with an additional intent which necessarily is something more than the mere intent to possess the proscribed weapon." (*People v. Ratcliff* (1990) 223 Cal.App.3d 1401, 1414 (*Ratcliff*); cf. *People v. Bradford* (1976) 17 Cal.3d 8, 22-23 [felon's fortuitous possession of officer's weapon after "wresting" it away from officer during confrontation following a traffic stop was simultaneous and not distinct from act of assaulting officer with the weapon, therefore section 654 applied].)

Section 12021 proscribes possession of a firearm by a felon whether that possession is actual or constructive. (*People v. Spirlin* (2000) 81 Cal.App.4th 119, 130; see also CALCRIM No. 2511 ["Two or more people may possess something at the same time. . . . [¶] A person does not have to actually hold or touch something to possess it. It is enough if the person has control over it or the right to control it, either personally or through another person"].) The prosecutor argued to the jury that defendant Moeum was guilty of being a felon in possession solely on the grounds of his *constructive* possession of the firearms while in the van on the way to the robberies. Substantial evidence supports the findings that Moeum was in constructive possession of the firearms for at least that period of time the suspects were en route to Custom City Auto Sales where the firearms were ultimately used by certain of the codefendants to commit the robberies and resulting murders. Under applicable law, "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*." (*Jones*, *supra*, 103 Cal.App.4th at p. 1145, italics added.)

Defendant Moeum does not provide any compelling argument or authority supporting the conclusion that the section 654 analysis should be different simply because his culpability on count 12 was based on *constructive* possession, as opposed to *actual* possession. We reiterate that the crime of being a felon in possession of a firearm "is committed the instant the felon in any way has a firearm within his control." (*Ratcliff*, *supra*, 223 Cal.App.3d at p. 1410.) Therefore, Moeum's constructive possession while in

the van " 'constituted one offense, and this was an act separate and apart from any use that was made of the [guns], and would have been a completed offense even if no use had been made of [them].' [Citation.]" (*Id*. at p. 1411.) Punishment for that possession, along with separate punishment for the use of the firearms in the separate felonies committed inside the store does not conflict with section 654. We do not find Moeum's citation to recent cases of the Supreme Court discussing section 654 in other factual contexts, such as *People v. Jones* (2012) 54 Cal.4th 350, dispositive.

5. Defendant Kol's Absence From the Restitution Hearing

Defendant Kol contends it was error to hold a restitution hearing, and make orders regarding restitution, in his absence. "An appellate court applies the independent or de novo standard of review to a trial court's exclusion of a criminal defendant from trial, either in whole or in part." (*People v. Waidla* (2000) 22 Cal.4th 690, 741.) Exercising our independent review, we conclude Kol has failed to show prejudice from his absence at the conclusion of the restitution hearing.

"It is established that a defendant has a federal constitutional right, emanating from the confrontation clause of the Sixth Amendment and the due process clause of the Fourteenth Amendment, to be present at any stage of the criminal proceedings 'that is critical to its outcome if his presence would contribute to the fairness of the procedure.' [Citations.] In addition, a defendant has the right to be personally present at critical proceedings, pursuant to the state Constitution (Cal. Const., art. I, § 15; [citation]), as well as pursuant to statute (§ 977, 1043)." (*People v. Bradford* (1997) 15 Cal.4th 1229, 1356-1357 (*Bradford*).)

Section 977, subdivision (b)(1) provides in pertinent part: "In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as

provided by paragraph (2)." The ordering of restitution is plainly part of the sentencing process.

Defendant Kol does not dispute that he was present, with counsel, for his sentencing hearing. However, after the arguments of counsel, the victim statements and the imposition of sentence, the court inquired about restitution for the victims. The following colloquy occurred:

"[THE PROSECUTOR]: There is restitution. And I did forget to bring that up. If I could just take a break to get it off of the computer. It's to the Victims' Compensation Fund. Unless counsel is willing to stipulate that we can --

" [KOL'S COUNSEL]: I haven't seen it. But once I see it, Your Honor, I'm sure I'd stipulate to it. I just want to verify.

"[THE PROSECUTOR]: I can get it done this morning.

"THE COURT: The court is going to impose restitution for the victims. And, counsel, just get me the paperwork, and we'll incorporate that into our minute order."

The court then ordered various fines and fees, and read defendant Kol his appellate rights. After a break in the proceedings, the hearing was resumed. The record does not indicate why Kol was not present at the resumption of the proceedings. However, the court stated on the record that his counsel was present with the prosecutor and they had been discussing the restitution amounts. The prosecutor proceeded to state the amounts to be paid to the fund, as well as to the decedent's families. The court ordered those amounts to be joint and several among the named defendants. No objection was stated on the record by defense counsel.

"Defendant has the burden of demonstrating that his absence prejudiced his case or denied him a fair trial." (*Bradford*, *supra*, 15 Cal.4th at p. 1357.) While we do not intend to minimize the importance of defendant Kol's right to be present during sentencing proceedings, given the unique facts here, we do not believe Kol has shown, or can show, any prejudice from his absence at the resumed portion of the hearing, when the record reflects the parties had apparently been discussing and agreeing, off the record, to the sums to be ordered, and the court then adopted those numbers on the record without

objection from counsel. Kol offers no information as to how the proceeding may have been resolved differently or what objections may have been raised had he been present.

6. Defendant Meas's Claimed Instructional Error

Defendant Meas contends the court had a duty to instruct on lesser included offenses supported by substantial evidence and that the refusal to instruct with his requested accessory instruction was error. We review a claim of instructional error de novo. (*People v. Alvarez* (1996) 14 Cal.4th 155, 217.) We find no instructional error.

Section 32 defines an accessory as follows: "Every person who, *after a felony has been committed*, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony." (Italics added.) For culpability to be limited to that of an accessory, there must be substantial evidence the defendant's involvement consisted only of conduct occurring *after* the felonies of his or her codefendants had been completed.

Further, the court's obligation to instruct on all principles of law relevant to the issues raised by the evidence at trial includes the obligation to give "instructions on lesser included offenses when the evidence raises a question as to whether all of the elements of the charged offense were present [citation], *but not when there is no evidence that the offense was less than that charged*." (*People v. Wickersham* (1982) 32 Cal.3d 307, 323-324, italics added, overruled on other grounds in *People v. Barton* (1995) 12 Cal.4th 186, 201; accord, *Bradford, supra,* 15 Cal.4th at p. 1345.)

However, by defendant Meas's own admissions, the defendants drove to Custom City Auto Sales in the van Meas used for his job, and Meas knew from the beginning they were going to rob people of "weed," even though he denied knowing anyone was going to have guns. Meas also conceded he drove the van away from the store after all the defendants returned to the van, with the items stolen from the victims in their possession, in an attempt to flee from the scene.

The evidence of defendant Meas's knowledge and conduct before and during the commission of the robberies was therefore solidly consistent with aiding and abetting liability, not liability of an accessory. "[T]he commission of a robbery for purposes of determining aider and abettor liability continues until all acts constituting the robbery have ceased. The asportation, the final element of the offense of robbery, continues so long as the stolen property is being carried away to a place of temporary safety. Accordingly, in order to be held liable as an aider and abettor, the requisite intent to aid and abet must be formed *before or during such carrying away of the loot to a place of temporary safety*. Therefore, a getaway driver who has no prior knowledge of a robbery, but who forms the intent to aid in carrying away the loot during such asportation, may properly be found liable as an aider and abettor of the robbery." (*People v. Cooper* (1991) 53 Cal.3d 1158, 1161 (*Cooper*).)

The existence of some inconsistent statements by defendant Meas during his interview with detectives where he claimed to have not known what was going on, or that he did not know the African-American codefendants would bring and use guns, is not substantial evidence that Meas could only reasonably be found guilty of the lesser offense of being an accessory. Even accepting defendant Meas's interpretation of the record that his first culpable act was commandeering the van to drive all of the defendants away from the scene is insufficient to justify an accessory instruction. Under no reasonable interpretation of the evidence were the robberies complete at that time. The asportation element unequivocally coincided with the attempt to flee with the stolen items. The robberies were still ongoing and Meas's participation at that point subjected him to liability as an aider and abettor. (*Cooper, supra*, 53 Cal.3d at pp. 1164-1165, 1170.) There is no evidence upon which a jury could reasonably find that Meas only assisted the codefendants in an attempt to flea *after* the robberies were legally deemed complete, and the court therefore did not err in refusing to instruct on accessories. (*Bradford, supra*, 15 Cal.4th at p. 1345.)

7. Substantial Evidence Supports the Convictions Against Defendant Meas

Defendant Meas contends the record lacks substantial evidence supporting his culpability as an aider and abettor of the robberies and resulting murders. Meas urges that, at most, the evidence supports a finding he was an accessory after the commission of the crimes, and that his convictions must therefore be reversed, or reduced in degree to the lesser included offense of a violation of section 32, consistent with the evidentiary record. We disagree.

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--that is, evidence that is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.) "We ' "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' [Citation.]" (*People v. Davis* (1995) 10 Cal.4th 463, 509.) And, " '[a]lthough we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]' [Citation.]" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

As discussed in part 6 above, there was substantial evidence supporting defendant Meas's liability as an aider and abettor. (See *People v. Swanson-Birabent* (2003) 114 Cal.App.4th 733, 743 ["The 'act' required for aiding and abetting liability need not be a substantial factor in the offense. ' "Liability attaches to anyone 'concerned,' however slight such concern may be, for the law establishes no degree of the concern required to fix liability as a principal."]; *People v. Campbell* (1994) 25 Cal.App.4th 402, 409 [" 'factors which may be considered in making the determination of aiding and

abetting are: presence at the scene of the crime, companionship, and conduct before and after the offense' "]; *People v. Nguyen* (1993) 21 Cal.App.4th 518, 531-532 [perpetrator need not expressly communicate criminal purpose that is apparent from the circumstances as "[a]iding and abetting may be committed 'on the spur of the moment,' . . . as instantaneously as the criminal act itself"].) Defendant Meas has not shown any basis for disturbing the jury's findings as to his guilt.

8. Defendant Meas's Sentence Is Not Cruel and Unusual

Defendant Meas argues his sentence of life in prison without the possibility of parole on count 2 is the functional equivalent of a death sentence and was therefore cruel and unusual given he was only 19 years old and had no prior adult criminal history. We are not persuaded.

The United States Supreme Court has held that a sentence of "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.' " (*Miller v. Alabama* (2012) __ U.S. __ [132 S.Ct. 2455, 2460]; see also *Roper v. Simmons* (2005) 543 U.S. 551, 568 (*Roper*) [holding the death penalty may not be imposed on a juvenile defendant because the Eighth Amendment must be interpreted in accordance with evolving standards of decency and executing juveniles is unjust]; *People v. Caballero* (2012) 55 Cal.4th 262, 268-269 [rejecting sentences for juvenile offenders for nonhomicide crimes that effectively result in life without the possibility of parole].)

Defendant Meas concedes, as he must, that he was *not* under the age of 18 at the time of the crimes here. He further concedes the federal and state cases that have discussed unconstitutionally disproportionate sentencing draw a bright line at the point a juvenile reaches the age of majority. In the state of California, as in many jurisdictions, that age is 18. (See Fam. Code, § 6500; *People v. Valladares* (1984) 162 Cal.App.3d 312.)

Nevertheless, defendant Meas urges this court to extend *Roper* and its progeny and find that the life sentence imposed against him was cruel and unusual because he was only a year older than 18, he had no adult criminal history and he played an allegedly

minor role in the crimes in that he did not fire any weapon. As set forth above, the record contains substantial evidence that Meas aided and abetted a coordinated robbery in which two individuals were killed, and another individual was seriously wounded. Defendant has not persuaded us his statutorily prescribed sentence is unconstitutionally infirm.

Defendant Meas further argues this court should, at a minimum, remand for resentencing with the trial court directed to consider all relevant mitigating factors. The record does not support a finding the trial court ignored any relevant sentencing factors at the time of the original sentencing. Defendant Meas has not affirmatively shown a basis for a new sentencing hearing.

9. Defendant Moeum's Appeal From the Retrial on Count 2 (B246888)

In his appeal from the retrial, defendant Moeum reasserts his argument regarding the alleged involuntariness of his custodial statement as the sole basis for challenging his conviction on count 2 for the murder of Mr. Robins. As in the first trial, defense counsel did not specifically object to the admission of Moeum's custodial statement on such grounds and the objection was therefore forfeited. However, in light of Moeum's petition for habeas corpus (case No. B250584), we address the merits. For the reasons set forth above in part 1 of the Discussion, we conclude Moeum's argument lacks merit.

Defendant Moeum further argues the court's imposition of a $240 restitution fine pursuant to section 1202.4, subdivision (b) was in error because the statutory maximum restitution fine amount of $10,000 was imposed in the first trial relative to the same jointly filed charges. Respondent contends the statutory language supports the imposition of a separate restitution fine because the conviction on count 2 occurred in a separate retrial or "case." The parties agree there is no case discussing section 1202.4 that is factually on point.

As an initial matter, we reject respondent's argument this issue was forfeited by defendant Moeum by his failure to object at the time of sentencing. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534 (*Blackburn*) [where court imposes restitution in amounts that could not lawfully be imposed by statute, it amounts to the type of

unauthorized sentence for which a failure to object at trial does not result in forfeiture on appeal].)

In the first trial, the court imposed the statutory maximum restitution fine of $10,000. Section 1202.4, subdivision (b) provides in pertinent part: "*In every case* where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. [¶] (1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than two hundred forty dollars ($240) starting on January 1, 2012 . . . and not more than ten thousand dollars ($10,000)." (Italics added.)

The maximum amount of a restitution fine is not affected by the number of counts or charges brought in any one case. It is well established " '[t]he maximum [restitution] fine that may be imposed in a criminal prosecution is $10,000 "*regardless of the number of victims or counts involved*." [Citation.]' [Citation.]" (*Blackburn, supra*, 72 Cal.App.4th at p. 1534, italics added.) The question becomes whether the retrial on count 2, following the mistrial, counts as a new "case" in which a new restitution fine may be imposed. We conclude it does not.

Defendant Moeum primarily relies on *People v. Ferris* (2000) 82 Cal.App.4th 1272 which concluded that separate restitution fines were not authorized where separately filed charges were joined for trial and resolved in one proceeding. The separate cases, while tried jointly, were never formally consolidated under one case number. (*Id*. at pp. 1277-1278.) However, *Ferris* did not involve a mistrial, and was also criticized by the Supreme Court in *People v. Soria* (2010) 48 Cal.4th 58 (*Soria*).

Soria involved a defendant against whom multiple cases had been filed, under separate case numbers, arising from multiple different incidents and criminal acts. The parties agreed to resolve the multiple criminal cases pursuant to one joint plea agreement. (*Soria, supra*, 48 Cal.4th at pp. 61-62.) The Supreme Court held the cases retained their status as separate cases for purposes of section 1202.4. "[W]ithout consolidation,

separately filed cases remain separate for purposes of the restitution statutes, even when they are jointly resolved at the plea and sentencing stages." (*Soria,* at p. 64.)

The granting of a mistrial on count 2 did not transform the retrial into a new "case." "In the context of sections 1202.4(b) and 1202.45, a 'case' is a formal criminal proceeding, filed by the prosecution and handled by the court as a separate action with its own number." (*Soria*, *supra*, 48 Cal.4th at pp. 64-65.) Respondent fails to provide any persuasive argument for concluding otherwise.

Here, there were no separate charges arising from separate incidents filed as separate cases under different case numbers. There were only multiple counts arising from one incident filed against defendant Moeum in one information, under one case number. Defendant Moeum was found guilty on all charges, except for counts 2 and 6, where irregularities in the verdict forms and the taking of the verdicts from the jury on the record resulted in count 6 being dismissed and a mistrial being granted as to count 2. Count 2 was then retried a couple of months later, under the same case number, resulting in Moeum's conviction on that count. This was *not* two "cases," and we believe the plain language, as well as the spirit, of section 1202.4, subdivision (b) does not support the imposition of a separate restitution fine on count 2. The $240 restitution fine must therefore be stricken.

10. The Sentencing Errors

We now turn to those issues that require partial modification of the defendants' respective sentences. Respondent concedes the merit of defendants' arguments on these contentions.

a. Defendant Moem's four-month term for the firearm enhancement on count 15

The court imposed a consecutive four-month term pursuant to section 12022, subdivision (a)(1) on count 15, the assault with a firearm charge. Defendant Moeum contends the additional term on the principal with a firearm enhancement is improper and should be stricken. We agree.

As relevant here, section 12022, subdivision (a)(1) provides that "a person who is armed with a firearm in the commission of a felony . . . shall be punished by an additional and consecutive term of imprisonment . . . for one year, *unless the arming is an element of that offense*." (Italics added.) Count 15 was the assault with a firearm charge pursuant to section 245, subdivision (a)(2). That count required the prosecution to prove the assault on Mr. Williams was committed "with a firearm." (§ 245, subd. (a)(2).) Arming was an element of the substantive offense and the imposition of a consecutive one-year term on the enhancement pursuant to section 12022, subdivision (a)(1) was therefore error. (*People v. Sinclair* (2008) 166 Cal.App.4th 848, 855-856.) The four-month term for the enhancement on count 15 must be stricken from defendant Moeum's sentence.

b. The restitution awards

Defendant Moeum argues his abstract of judgment does not accurately reflect the court's oral pronouncement as to restitution. At the sentencing hearing, the court orally imposed victim restitution awards in favor of the State Victim Compensation Board, as well as the families of the two decedents, *jointly and severally* against all defendants. However, the minute order from the sentencing hearing and the abstracts of judgment for all three defendants erroneously state that restitution was imposed "jointly and separately." The court's oral pronouncement of sentence controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186 (*Mitchell*) ["An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize."].)

Defendants Kol and Meas joined in defendant Moeum's argument. The abstracts of judgment for all three defendants must be modified to correctly reflect the court's oral pronouncement as to the restitution order.

c. The parole revocation fines

All three defendants were sentenced to at least one term of life without the possibility of parole. They contend the imposition of $10,000 parole revocation fines pursuant to section 1202.45 was therefore improper. Once again, we agree.

By the plain statutory language, the imposition of a parole revocation fine pursuant to section 1202.45 is improper where the defendant's sentence contains no possibility of parole. (See *People v. Jenkins* (2006) 140 Cal.App.4th 805, 819; accord, *People v. Oganesyan* (1999) 70 Cal.App.4th 1178, 1185-1186.) The parole revocation fines must be stricken as to all three defendants.

d. Defendant Kol's sentence on count 5

At defendant Kol's sentencing hearing, the court orally imposed sentence on count 5 (attempted murder of Mr. Richardson) stating, in relevant part, "the minimum parole date is seven years, but it's life imprisonment, plus an additional one year for the 12022(a)(1)." However, Kol's abstract of judgment erroneously reflects a sentence of life *without* the possibility of parole on count 5. Kol's abstract of judgment must be modified to conform to the court's oral pronouncement of sentence. (*Mitchell, supra,* 26 Cal.4th at pp. 185-186.)

DISPOSITION

In appeal case No. B243664:

The sentence as to defendant and appellant Sophorn J. Moeum is modified as follows: on count 15 (assault with a firearm), the four-month term for the firearm enhancement pursuant to Penal Code section 12022, subdivision (a)(1) is stricken; in the restitution order, the phrase "joint and separate" is replaced with "joint and several"; and the $10,000 parole revocation fine pursuant to section 1202.45 is stricken. The judgment of conviction as to Sophorn J. Moeum is otherwise affirmed in all other respects.

The sentence of defendant and appellant Sorporn D. Kol is modified as follows: on count 5 (attempted first degree murder), the term of life without the possibility of parole is deleted and replaced with a consecutive term of life imprisonment, plus one year for the enhancement pursuant to Penal Code section 12022, subdivision (a)(1); in the restitution order, the phrase "joint and separate" is replaced with "joint and several"; and the $10,000 parole revocation fine pursuant to section 1202.45 is stricken. The judgment of conviction as to Sorporn D. Kol is otherwise affirmed in all other respects.

The sentence of defendant and appellant Chendareth T. Meas is modified as follows: in the restitution order, the phrase "joint and separate" is replaced with "joint and several"; and the $10,000 parole revocation fine pursuant to Penal Code section 1202.45 is stricken. The judgment of conviction as to Chendareth T. Meas is otherwise affirmed in all other respects.

In appeal No. B246888:

The sentence as to defendant and appellant Sophorn J. Moeum is modified as follows: the $240 restitution fine pursuant to Penal Code section 1202.4, subdivision (b) is stricken. The judgment of conviction as to Sophorn J. Moeum is otherwise affirmed in all other respects.

The superior court is directed to prepare modified abstracts of judgment according to and consistent with this opinion, and transmit same forthwith to the Department of Corrections and Rehabilitation.

GRIMES, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.