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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DAYVON MARCUS CANADA, Defendant and Appellant.	B234662 (Los Angeles County Super. Ct. No. BA379340)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert J. Perry, Judge. Affirmed with directions.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, James William Bilderback II and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Dayvon Marcus Canada (Canada) appeals his conviction for voluntary manslaughter in violation of Penal Code section 192, subdivision (a).[1] He contends that the evidence establishes that he acted in perfect self-defense and therefore his conviction must be reversed. Alternatively, he argues that the trial court abused its discretion when it sentenced him to the upper term of 11 years for voluntary manslaughter as well as to the upper term of 10 years for a firearm use enhancement pursuant to section 12022.5, subdivision (a).

We find no error and affirm. However, the People point out that there is a clerical error in the abstract of judgment. Accordingly, we direct the trial court to amend the abstract of judgment to reflect that Canada received a sentence enhancement under section 12022.5, subdivision (a).

FACTS

The information

The Los Angeles District Attorney's office filed an information against Canada. The information alleged that he murdered Melvin Robbins (Robbins) in violation of section 187, subdivision (a).

Trial

The prosecution called eyewitnesses Marvin Cabrera (Cabrera) and Maggie Conners (Conners) to testify at the trial. The defense called Canada to testify on his own behalf.

Conner's Testimony

On the date of the incident, Conners was sitting in the back of a bus with her boyfriend, Robbins. Canada boarded the bus and asked Conners, "Do you know where the weed is?" Robbins stood up and said that he did not want Canada talking to Conners. Following this exchange, Robbins and Canada argued. Neither man threatened the other. At one point, Robbins approached Canada and stood face-to-face with him, but Robbins did not hit Canada, nor did Robbins put up a fist or try throwing a punch.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

Canada shot Robbins.

Cabrera's Testimony

When Cabrera got on the bus, he heard Canada and Robbins arguing. Cabrera sat directly behind Canada and heard him tell Robbins, "Man, I know your bitch since high school." Canada said, "Fuck your bitch," and called Conners a "slut." Robbins tried to defend Conners. He told Canada to stop calling Conners "bitch and names" and said, "I'm gonna kick your ass." In response, Canada said, "Don't come over. You're going to get hurt." Robbins was angry. He got up, approached Canada and lunged forward with his right fist clenched at his side.

Canada took a gun from his backpack and shot Robbins in the midsection. Standing up with the gun at his side, Canada said, "Stop the bus. Everybody sit the fuck down. [¶] . . . [¶] Or I'm gonna shoot." The bus driver opened the door and Canada ran off the bus.

Canada's Testimony

When Canada boarded the bus, he was carrying a backpack that contained a loaded firearm. He eventually recognized Conners. They had gone to high school together, and he had seen her in his neighborhood. He asked her, "Where's the weed at?" Robbins stood up, walked over and said, "Don't be talking to my girl like that. I'll kick your fucking ass." He sat back down but he called Canada names and told him not to talk to Conners. Although Canada attempted to calm Robbins down, Robbins started cursing, calling Canada a "bitch" and saying that he was going to beat Canada "down." Canada considered getting off the bus because Robbins was so angry but decided not to because the bus was in a bad neighborhood.

Canada turned sideways in his seat, put his backpack on his lap and put his back against the wall so Robbins could not attack from behind. Robbins continued to rant and rave and told Canada to face forward. Canada explained that he was not trying to disrespect Robbins. At the same time, Conners was trying to calm Robbins down. Robbins stood up a second time and sat down. He was screaming and telling Canada not

to look at him. Shortly after, Robbins got up a third and final time and approached Canada.

Robbins was very big. He threatened Canada with a beating. When Robbins saw Canada pointing his gun, Robbins still kept coming forward and said, "I['ll] take the gun from you." Then he blocked Canada from exiting his seat. Canada was terrified. At that point, he believed it was a "life-or-death situation" and that Robbins was going to kill him. Canada pulled the trigger.

After the shooting, Canada could not shoot the gun anymore because it had jammed. He stuffed the gun into his backpack, asked the bus driver to open the door and ran off the bus.

The verdict

The jury convicted Canada of a voluntary manslaughter, a lesser crime than murder. It found true that Canada personally used a firearm within the meaning of section 12022.5, subdivision (a).

Sentencing Hearing

At the sentencing hearing, the trial court stated, "The intended sentence would be to impose the high term, which would be 11 years on the voluntary manslaughter, and 10 years for use of the gun." Addressing defense counsel, the trial court said, "Do you wish to argue against it?"

Defense counsel requested an opportunity to argue. He said, "Mr. Canada is well aware of the seriousness of this case and the impact it's had on Mr. Robbins'[s] family. He is remorseful. Given his lack of record, however, and . . . strength of his ties to the community . . . [,] [¶] [m]y request, your Honor, would actually be for [the] low term on both the manslaughter charge and the [firearm] allegation. The jury found it was obviously a homicide, a manslaughter, that someone died, but it was out of heat of passion. [¶] On that I'll submit."

The trial court stated the following. "The [trial court] has read the probation report. I've read the sentencing memorandum from the prosecution. The [trial court] agrees with the defense, the defendant has no significant prior criminal history. That is a

mitigating factor in his defense when I consider sentencing. Had the case been tried to me, I likely would have convicted the defendant of murder. [¶] I feel that there are a number of aggravated circumstances in this situation. He took a loaded gun on a bus, he engaged a fellow passenger in an argument. My view of the evidence was he continued to engage the fellow passenger in the argument and then shot and killed him. And of course, the victim was unarmed. As an aggravating circumstance, I believe the defendant has shown he is a danger to society. [¶] I do impose the high term of 11 years for the conviction of voluntary manslaughter. For the use of the gun, I do find that the victim was especially vulnerable, unarmed, unsuspecting, engaged in a verbal altercation with no hint that he could end up being shot down as he was on a crowded bus, and I think that the circumstances of the case do support a high term of 10 years on the use of the gun. [¶] So the total sentence imposed today is 21 years."

This timely appeal followed.

DISCUSSION

I. Voluntary Manslaughter.

Canada contends that there is insufficient evidence to support his voluntary manslaughter conviction because the evidence showed that he acted in perfect self-defense. We disagree.

A. Standard of Review

In reviewing a jury verdict to determine whether the evidence is sufficient to support a conviction, "our role on appeal is a limited one." (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We review the entire record in the light most favorable to the judgment below to determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) "Before the judgment of the trial court can be set aside for insufficiency of the evidence to support the verdict of the jury, it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it. [Citation.]" (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

B. The Law

Homicide is justifiable when a defendant acts in perfect self-defense. To establish this defense, the facts must show that the defendant actually and reasonably believed that homicide was necessary in order to defend himself from imminent danger of death or great bodily injury. (*People v. Randle* (2005) 35 Cal.4th 987, 991 (*Randle*), overruled on other grounds in *People v. Chun* (2009) 45 Cal.4th 1172, 1201.) The "belief in the need to defend must be objectively reasonable" and "a jury must consider what 'would appear to be necessary to a reasonable person in a similar situation and with similar knowledge. . . .'" (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082–1083 (*Humphrey*).) If, however, a jury finds that a defendant held an "honest but unreasonable belief that [it was necessary] to defend oneself from imminent peril to life or great bodily injury," he or she may be convicted of voluntary manslaughter in "imperfect self-defense." (*People v. Blakely* (2000) 23 Cal.4th 82, 86; § 192.)

Voluntary manslaughter is "the unlawful killing of a human being without malice." (§ 192.) "[I]mperfect or unreasonable self-defense 'is not a defense but a crime; more precisely, it is a lesser offense included in the crime of murder.'" (*In re Walker* (2007) 147 Cal.App.4th 533, 537.)

The doctrine of imperfect self-defense requires that the "[f]ear of future harm—no matter how great the fear and no matter how great the likelihood of the harm—will not suffice. The defendant's fear must be of *imminent* danger to life or great bodily injury. '"[T]he peril must appear to the defendant as immediate and present and not prospective or even in the near future. *An imminent peril is one that, from appearances, must be instantly dealt with*." . . . [¶] This definition of imminence reflects the great value our society places on human life.' [Citation.] Put simply, the trier of fact must find *an actual* fear of an *imminent* harm. Without this finding, imperfect self-defense is no defense." (*In re Christian S.* (1994) 7 Cal.4th 768, 783.)

"The principles of self-defense are founded in the doctrine of necessity. This foundation gives rise to two closely related rules. . . . First, only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the

necessity is not justified. [Citation.] Second, deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury; thus '[a] misdemeanor assault must be suffered without the privilege of retaliating with deadly force.' [Citations.]" (*People v. Clark* (1982) 130 Cal.App.3d 371, 380 (*Clark*).)

C. *Analysis*

Based on the record developed by the prosecutor, the jury was provided with ample evidence that Canada did not act in perfect self-defense.

Robbins and Canada argued and Robbins got up three times. The third time, he approached Canada and boxed him in his seat. But Robbins was not armed, and he did not throw any punches. Rather, his fist was clenched at his side. According to Conners, Robbins did not issue any threats. Even though Cabrera and Canada testified otherwise, that testimony conflicts with Conners' testimony and must be ignored on appeal. These events took place on a crowded bus in front of multiple witnesses who could have intervened or called for help, and they could have later testified at a trial if Robbins was tried for assault, battery or murder. Thus, the evidence established that while Robbins was larger than Canada[2] and therefore intimidating, he did not verbally threaten Canada or throw any punches, and he did not have an opportunity to commit a crime against Canada with impunity. Under these circumstances, there is substantial evidence that any peril was prospective, not immediate.

Because the peril was prospective, there was substantial evidence that lethal force was not warranted. Bolstering our point is the recognition that the law required Canada to suffer a misdemeanor assault without resorting to gunfire. Robbins's actions did not even rise to an assault. A misdemeanor assault "is an unlawful attempt, coupled with a

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[2] In its respondent's brief, the Attorney General's Office states: "[Canada] was five feet, six inches tall and weighed between 124 and 125 pounds. . . . A coroner's report admitted into evidence . . . showed Robbins was six feet, four inches tall and weighed 261 pounds."

present ability, to commit a violent injury on the person of another." (§ 240.) Robbins never attempted to hit Canada.

Canada suggests that *Clark* supports reversal. Not so.

In *Clark*, defendant had an affair with the victim's wife. The defendant eventually told the victim and agreed to terminate the affair. During the ensuing months, the victim made a number of verbal threats against the defendant. On several occasions, the victim tried to confront the defendant. On at least two occasions, the victim engaged the defendant in a car chase but the defendant was able to get away. The defendant began carrying a loaded pistol under the seat of his car. Eventually, the victim approached the defendant while defendant was in his car on his own driveway. The victim approached the window and said, "Your time is now." (*Clark*, *supra*, 130 Cal.App.3d at p. 376.) The defendant had taken the pistol out. When the victim reached into the car, the pistol discharged into his chest. (*Ibid*.) On appeal, the court rejected the defendant's theory of perfect self-defense. Though the defendant had an objectively reasonable fear of imminent harm, the defendant's use of lethal force was not necessary because there was no indication that the victim had threatened the defendant with a firearm. Indeed, "[t]he only intent on the part of the victim was to engage defendant in fisticuffs, to 'beat him up,' and the evidence did not establish that the victim was so physically overwhelming that defendant had reason to fear great bodily injury from such an encounter." (*Id*. at p. 381.)

Canada argues that "*Clark* makes it clear that, in a situation where the victim is so physically overwhelming that the defendant has reason to fear great bodily injury from such an encounter, the defendant's use of deadly force would be justified as a matter of law, even though the victim was unarmed." We cannot concur. *Clark* did not hold that if a victim is physically imposing, a fear of great bodily injury is objectively reasonable and the use of lethal force is justified per se. Rather, the court merely considered the victim's size as one factor in analyzing the necessity of the lethal force used by the defendant.

II. Sentencing.

Canada contends that the trial court abused its discretion by sentencing him to the upper term for voluntary manslaughter and the upper term for the firearm use enhancement. In particular, he argues: (1) as to the upper term for voluntary manslaughter, the finding that he was a threat to society was based on improper criteria and facts not supported by the record; and (2) as to the upper term for the gun use enhancement, there is insufficient evidence that Robbins was especially vulnerable. According to the People, Canada forfeited these objections because he did not raise them below. With respect to the merits, the People contend that the trial court's ruling did not amount to an abuse of discretion.

The People are correct.

A. Standard of Review

The propriety of a sentence imposed pursuant to section 1170, subdivision (b) is reviewed for an abuse of discretion. (*People v. Moberly* (2009) 176 Cal.App.4th 1191, 1196.) "A trial court will abuse its discretion [under the statutory scheme] if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision." (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) As long as there exists a reasonable or even fairly debatable justification under the law for the action taken by the trial court, it will not be disturbed on appeal even if as a matter of first impression the appellate court may have taken a different view on the issue. (*Gonzales v. Nork* (1978) 20 Cal.3d 500, 507.)

B. Determinate Sentencing Law

"When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. . . . In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

The court shall select the term which, in the court's discretion, best serves the interests of justice. The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. . . ." (§ 1170, subd. (b).) "A fact that is an element of the crime upon which punishment is being imposed may not be used to impose a greater term." (Cal. Rules of Court, rule 4.420(d).) Based on these rules, a trial court has "broad discretion in selecting a term within a statutory range." (*People v. Wilson* (2008) 164 Cal.App.4th 988, 992.) "[T]he middle term is no longer the presumptive term absent aggravating or mitigating facts found by the trial judge[,] and . . . a trial judge has the discretion to impose an upper, middle or lower term based on reasons he or she states." (*Ibid.*)

C. Forfeiture

"[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*People v. Scott* (1994) 9 Cal.4th 331, 356 (*Scott*).) But there is no forfeiture absent "a meaningful opportunity to object." (*Ibid*.) "This opportunity can occur only if, during the course of the sentencing hearing itself and before objections are made, the parties are clearly apprised of the sentence the court intends to impose and the reasons that support any discretionary choice." (*Ibid*.)

Based on *Scott*, the People argue that Canada forfeited his objections. They aptly point out that Canada failed to argue that the trial court relied on improper criteria when determining that Canada was a threat to society, and that there was insufficient evidence to support the trial court's findings. We conclude that *Scott* forecloses the objections Canada now raises for the first time.

Canada contends that *Scott* is inapplicable to sentences imposed under the current version of section 1170, subdivision (b).[3] We cannot accede. It is true that *Scott* applied

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[3] The prior version of section 1170, subdivision (b) controlled a trial court's choice of sentence. It required a trial court to impose the middle term unless there were

the forfeiture rule to a sentence under a previous version of section 1170, subdivision (b). But Canada reads *Scott* too narrowly. "[A]pplication of the [forfeiture] rule helps avoid errors and the need for appellate intervention in the first place." (*Scott, supra*, 9 Cal.4th at p. 355; *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264 ["""""The purpose of the general doctrine of waiver [or forfeiture] is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had . . . """""].) That policy rationale remains as strong under the current version of the statute as it was under the old version.

Next, Canada argues that he preserved his objection by requesting the lower term. The problem is that his request for the lower term did not alert the trial court to Canada's present assignment of error. Thus, Canada did not lodge an objection that gave the trial court an opportunity to consider whether its ruling transgressed the law and, if so, how to remedy that transgression.

Last, Canada argues: "[E]ven assuming that the rule of *Scott* is applicable [to] sentences imposed under the current version of [section 1170, subdivision (b)], the rule only prevents a defendant from raising the issue on appeal when there is a meaningful opportunity to object before sentence is imposed, that is, only when 'the trial court describes the sentence it intends to impose and the reasons for the sentence, and the [trial] court thereafter considers the objections of the parties before the actual sentencing.' [Citation.] [¶] Here, although the trial court announced the sentence that it intended to impose, and heard argument from defense counsel before imposing sentence, the [trial] court never stated the reasons upon which it intended to base the upper term sentence. Therefore, [Canada] did not have a meaningful opportunity to object to the [trial] court's improper using of the aggravating circumstances discussed in [Canada's] opening brief, and the record lacks any affirmative indication that the trial court was willing to consider objections to these factors."

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circumstances in aggravation or mitigation of the crime. (*Cunningham v. California* (2007) 549 U.S. 270, 277.)

In our view, Canada had an adequate opportunity to object. Our Supreme Court explained: "[T]he *Scott* rule applies when the trial court 'clearly apprise[s]' the parties 'of the sentence the court intends to impose and the reasons that support any discretionary choices' [citation], and gives the parties a chance to seek 'clarification or change' [citation] by objecting to errors in the sentence. The parties are given an adequate opportunity to seek such clarifications or changes if, at *any time* during the sentencing hearing, the trial court describes the sentence it intends to impose and the reasons for the sentence, and the court thereafter considers the objections of the parties before the actual sentencing. The court need not expressly describe its proposed sentence as 'tentative' so long as it demonstrates a willingness to consider such objections." (*People v. Gonzalez* (2003) 31 Cal.4th 745, 752 (*Gonzalez*).)

Here, the trial court announced its intended sentence and asked if defense counsel wished to argue. Defense counsel argued for the lower term. Then the trial court gave the reasons for its sentence. It would have been preferable for the trial court to give its reasons first. Nonetheless, as required by *Gonzalez*, the trial court gave its reasons during the sentencing hearing. And, as indicated by its initial invitation for argument, the trial court was amenable to hearing and considering any objections. After the trial court articulated the reasons for imposing the upper term, defense counsel simply chose not to pursue further argument.

Our analysis could end here. For the sake of being complete, we continue on to the merits of Canada's objection.

D. *The Upper Term for Voluntary Manslaughter Must be Affirmed*

Pursuant to the California Rules of Court, a trial court may consider any aggravating factor it deems appropriate for making a sentencing decision. (Cal. Rules of Court, rule 4.408(a).)

The record establishes that Canada took a firearm onto a crowded bus, called Conners derogatory names and engaged in an argument with Robbins. That argument did not end until Robbins was shot. The shooting aside, there was sufficient evidence to support the trial court's determination that, as an aggravating factor, Canada posed a

threat to society. Anyone who arms himself and then engages in a verbal altercation is guilty of lighting a fuse to a powder keg. While the trial court could not consider the ensuing explosion (the shooting) as a circumstance in aggravation, the trial court quite properly considered the fact that Canada was responsible for participating in a scenario in which a shooting could easily occur.

Canada argues that the trial court improperly considered his possession of a firearm on a bus because that is an element of both manslaughter and the firearm use enhancement. That is untrue. To prove an unlawful killing without malice and personal use of a firearm, the People were only required to prove that Canada unlawfully killed Robbins and that he used a firearm. The People were not required to prove that Canada possessed a firearm on a bus. In other words, the possession of a firearm on a bus was an entirely independent factor.

According to Canada, there was insufficient evidence to support the trial court's finding that he engaged or continued to engage Robbins in an argument. Canada maintains that "the uncontradicted evidence showed that Robbins initiated the argument, continued to yell at [Canada], threatened [Canada] multiple times, and ultimately physically assaulted [Canada]." The problem for Canada is the substantial evidence rule. The testimony of Cabrera was sufficient to establish that when he got on the bus, Canada and Robbins were arguing. Canada called Conners a bitch and slut, which angered Robbins. Though Conners testified that neither Canada nor Robbins issued a threat, Cabrera said that they both issued threats. In particular, Canada warned Robbins that he would get hurt if he came over. The trial court, as the finder of fact at the sentencing hearing, was entitled to conclude that Canada engaged in an argument and issued a threat while armed.

We note that in finding Canada a threat to society, the trial court factored in the shooting. This violated the spirit if not the letter of California Rules of Court, rule 4.420(d). But reversal is not automatic. Sentencing error in a noncapital case can be reversed only if a defendant is prejudiced pursuant to the test set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Sanchez* (1994) 23 Cal.App.4th 1680,

1688.) Thus, the question is whether it is reasonably probable that the trial court would have chosen the lower term or middle term absent its improper consideration of Canada's act of shooting Robbins. (*Ibid*.)

We conclude that the error was harmless. The trial court indicated that if it had been the trier of fact at trial, it probably would have convicted Canada of murder. And it is apparent that the trial court was concerned about Canada engaging in an argument while armed. Thus, there was ample evidence that Canada was a threat to society. We conclude that the trial court would still have imposed the upper term even if it did not consider the shooting.

Moving on, Canada argues that the sentence was arbitrary and capricious because the mitigating factors outweigh the aggravating factors. He points to the following mitigating factors: he acted in self-defense, he had no criminal history, he was remorseful, Robbins initiated the incident and assaulted Canada, and the crime was committed because of unusual circumstances that are unlikely to recur. Even if these facts are true, they do not allow us to second guess the trial court. The sentence—based on Canada being a threat to society—presented a fairly debatable justification under the law for the sentence. We are therefore required by precedent to defer to the trial court's proper exercise of its discretion. That said, it behooves us to recognize that some of the mitigating factors claimed by Canada are dubious. Even if Robbins initiated the argument, that fact loses import in light of Canada's escalation of the argument while he was armed. And if Canada travels on buses with a firearm and is willing to call a woman derogatory names in the presence of her boyfriend, there is an inference that the situation is not so unusual that it is unlikely to recur.

E. *The Upper Term for the Enhancement Must be Affirmed*

The trial court imposed the upper term on the enhancement because it found that Robbins was particularly vulnerable. We agree with Canada that the evidence did not support the trial court's finding. Nonetheless, we conclude that any error by the trial court in relying on that factor was harmless. Canada testified that his gun jammed after he shot Robbins. The inference is that Canada intended to shoot Robbins again even after

he fell. In addition, Cabrera's testimony established that after the shooting, Canada threatened to shoot if the bus passengers did not remain seated. Canada's actions demonstrated a high degree of callousness, a circumstance in aggravation under California Rules of Court, rule 4.421(a)(1). These facts would support imposition of the higher term for the gun use enhancement. Therefore, in our view, the result would have been the same absent the error.

III. The Abstract of Judgment.

The jury found true the allegation that Canada personally used a firearm in violation of section 12022.5, subdivision (a). That statute authorizes a 10-year upper term, which the trial court imposed. However, the abstract of judgment indicates that Canada received a 10-year enhancement under section 12022.53, subdivision (d). Section 12022.53, subdivision (d) does not authorize a 10-year enhancement. According to the People, the abstract of judgment contains a clerical error that must be corrected. We agree and therefore order the abstract of judgment amended to show that the firearm enhancement was imposed under section 12022.5, subdivision (a). (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The judgment is affirmed.

On remand the trial court is directed to amend the abstract of judgment to reflect that Canada received a sentence enhancement under section 12022.5, subdivision (a).

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ