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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. PABLO HERRERA, Defendant and Appellant.	B230337 (Los Angeles County Super. Ct. No. TA106282)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eleanor J. Hunter, Judge. Affirmed as modified.

Deborah L. Hawkins, 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, Stephanie A. Miyoshi and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals from his conviction for two counts of murder with special circumstances, three counts of attempted murder, kidnapping, felon in possession of a firearm, as well as the corresponding gang and firearm allegations.[1] His conviction arose out of shootings in 2007 and 2009. In 2009, while defendant was in custody on an unrelated offense, he confessed to the 2007 and 2009 crimes to undercover deputies posing as inmates. On appeal, defendant complains that his jailhouse confession should have been excluded on various grounds. He also argues that the 2007 and 2009 crimes should not have been tried together. Finally, he claims error in the imposition and calculation of custody and various fines. We disagree with all but his contention concerning the fines. We also conclude that defendant received more custody credits than he was entitled. We affirm the judgment with modifications.

FACTUAL AND PROCEDURAL BACKGROUND

1. *March 17, 2007 (Counts 1 & 2)*

On March 17, 2007, I.G. was walking in Compton when he heard gunshots, and saw a blue truck heading east on Josephine Court, and a light colored car heading west. I.G. saw one person in the truck, wearing a baseball cap. Los Angeles County Sheriff's

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[1] Defendant was charged by information with two counts of murder, with special circumstances (Pen. Code, §§ 187, subd. (a), 190.2, subd. (a)(3), (15) & (21), counts 1 & 3); three counts of attempted murder (§§ 664, 187, subd. (a), counts 2, 4 & 5); discharging a firearm at an inhabited dwelling (§ 246; count 6); kidnapping (§ 207, subd. (a), count 7); felon in possession of a firearm (former § 12021, subd. (a)(1), repealed by Stats. 2010, ch. 711, § 4, eff. Jan. 1, 2011, count 8), as well as gang (§ 186.22, subd. (b)(1)(C), counts 1-6), firearm (§§ 12022.53, subd. (d), counts 1-5; subd. (b), count 7), and prior prison term allegations (§ 667.5, subd. (b), counts 1-8). A jury convicted defendant of counts 1 through 8, found the special circumstances to be true, but found the firearm allegations to be not true for counts 1, 2, 4, and 7. The remaining special allegations were found to be true. Defendant was sentenced to three life terms without the possibility of parole, three life sentences, and an additional 76 years to life. He was also ordered to pay various fines and fees, including restitution of $10,000 for each murder count (§ 1202.4, subd. (b)), as well as a $20,000 parole revocation fee (§ 1202.45). He timely appealed.

Deputy Haralon Hicks responded to the shooting, and found Manuel Garcia Perez shot in the head, barely alive, slumped down in the passenger seat of a silver 2005 Chevy Impala. There was a Washington Nationals baseball cap near Perez on the passenger floorboard. The driver, E.C., was out of the car looking for help. The car's front windshield and back window were shattered. There were no firearms or unfired bullets in the car.

Perez later died from a gunshot wound to the head.

Responding deputies found shattered auto safety glass, bullet fragments, and a lead core bullet at the intersection of Bullis Road and Josephine Court. The fragments were most likely fired from a .38 special or a .357 magnum revolver. All of the bullets and fragments were fired from the same gun.

Defendant's dark blue Mitsubishi truck was seized on March 20, 2007, in front of his home on Short Avenue in Compton. Officers recovered a fired bullet from the truck, and the truck tested positive for gunshot residue.

That same day, deputies executed a search warrant at defendant's home. They found a box of .38 special rounds in the main bedroom, and graffiti on the garage door which said "SSCR," for "South Side Compton Varios," "MFL," and "13." They also found a bag of dog food. They did not find a gun. No arrests were made.

2. *February 8, 2009 (Counts 3-8)*

On February 8, 2009, J.A. was 13 years old. He was on the corner of Golden Street and Short Avenue in Compton when a man, wearing a blue Dodgers sweater and baseball cap, approached him and asked whether he was from "NSW" or belonged to a gang. J.A. responded that he was not a gang member. The man put his hand on J.A.'s shoulder, and threatened to kill him if he did not come with him. J.A. complied and walked with him toward Golden Street. The man asked him whether he knew the three or four men sitting on the steps of an apartment building at the 1200 block in East Golden Street. J.A. did not know them. The man then left J.A., pulled out a medium sized silver

handgun, and walked toward the men sitting in front of the apartment building. He fired at them, and they ran up the stairs of the complex.

At approximately 5:30 p.m. the same day, J.G.J. was walking from Long Beach Boulevard toward Golden. Two men walked past him; the older one, identified as defendant in a photo array, was wearing a blue sweatshirt and baseball cap. Defendant placed his right hand near the waist of his pants, and then J.G.J. heard several gunshots. Defendant ran with the pistol toward Short Avenue, got in the passenger side of a striped GMC pickup truck, which sped off down Short Avenue.

F.C. was on the stairs outside the Golden Street apartment complex when he noticed a man coming toward his group, which included his friend, A.Z., and A.Z.'s cousin, Angel Hernandez. A.Z. lived in the building. The man was wearing a blue Dodgers hat and a sweater. He pulled a silver gun out of his pocket, pointed the gun at F.C., fired one shot, and then fired three more. F.C. ran up the complex's stairs, and when he looked back he saw that Hernandez had been shot.

A.Z. saw a man lift up his shirt and pull out a gun from his waistband. The man had a tattoo with large lettering across his stomach. The gun was a dark nine-millimeter. A.Z., F.C., and Hernandez ran up the apartment stairs. A.Z. heard nine or ten shots, and saw his cousin, Hernandez, get shot. The shooter then ran away toward Short Avenue. Some of the bullets hit the wall of the apartment building. A.Z. had seen the shooter in the neighborhood about two weeks earlier, driving very slowly in a truck.

Hernandez was shot twice, and died from his injuries.

Jesus A. was near Poppy Street when he heard gunshots. He saw an S-10 truck driving quickly away.

Homicide detective Robert Kenney responded to the shooting at approximately 8:30 p.m. Four expended .45 caliber cartridge casings were found at the scene. A bullet was found on the second floor of the complex. They were fired from the same gun.

On February 27, 2009, Detective Kenney executed a search warrant on defendant's home, found a set of car keys with the GM insignia, and found two blue Dodgers caps and blue folders with gang writing and pictures of gang members. Kenney

returned to defendant's home on March 9, and found a business card for an auto body and paint shop. When he went to the shop, employee E.M. reported that he had dismantled an S-10 and gotten rid of the pieces. Deputies eventually recovered many of the pieces. The key found at defendant's house fit the recovered glove box.

E.M. testified that in February 2009, defendant brought a Chevy S-10 to the auto body shop to have the truck painted. The truck was blue with a gray stripe around it. E.M. sanded and primered the truck, but eventually dismantled it for parts after defendant's wife called and said they did not intend to pick it up.

3. *Jailhouse Confession*

Detective Manuel Avina participated in an undercover operation on March 27, 2009, at the Compton Courthouse. He and his partner, Detective Mike Beltran, were dressed as inmates and placed in a holding cell with defendant. There was a recording device in the cell. A transcript of the recording was admitted at trial.

Defendant was in jail for a "hot one," which is jail lingo for murder. When the detectives asked what evidence there may be against him, defendant responded, "They have to have fingerprints." When asked whether he still had the gun used in the crime, he responded that it was "[g]one." When Detective Beltran asked defendant how he disposed of the gun, defendant told him he sold it. Beltran asked defendant whether "You got the [bullet] casings . . . ? Were they picked up or leave them there?" Defendant responded, "No, we picked them up." Defendant admitted that he buried the casings, and that the gun used was a revolver. He admitted membership in the Mexicans for Life (MFL) gang.

Beltran told defendant a story about sanding a car to conceal evidence of a murder, and defendant told detectives he did the same thing to his two-tone blue and gray truck, but that police had nevertheless recovered it. On the day of the 2009 murder, defendant told a kid, "Don't say anything or I'll kill you." He admitted to shooting one person, but that other people were present, and that they ran. He fired seven shots. The people he shot at were not from a gang, but were taggers. "But those fools had killed one of [his]

homies." Defendant had a friend waiting for him around the corner. He believed that "[t]wo old ladies . . . saw [his] truck," so he took it to the shop to have it painted, but later decided to junk it.

As to the 2007 murder, defendant admitted that his friend shot someone. Defendant hid the .38 caliber gun in a bag of dog food, and the police did not find it when they searched his home. He later sold the gun to a "black guy." Defendant was driving, and his friend was in the passenger seat and shot across defendant's body at a car driving in the opposite direction. Defendant was driving a navy blue truck, which was seized by the police.

4. *Gang Evidence*

Defendant is a member of "MFL," which stands for "Mobbing for Life" or "Mexicans for Life." His moniker is Shorty. It is a sect of the Compton Vario Setentas, one of the largest Hispanic gangs in Compton. MFL has approximately 30 members, and their primary activities are shootings and murders, among other crimes. Defendant has "Mexicans for Life" tattooed on his stomach, and "13," signifying the Mexican Mafia.

MFL was engaged in a gang war with "NSW," which stands for "Never Stop Writing" or "Never Show Weakness." There was NSW graffiti outside the apartment building where Angel Hernandez was killed. Compton Vario Tiny Gangsters are also an enemy of MFL, and Perez was shot in Vario Tiny Gangster territory. Perez was wearing a Washington Nationals baseball cap, frequently worn by NSW members. The killings would benefit defendant's gang because they would enhance its reputation.

5. *Pretrial Motions*

The following evidence was presented at the Evidence Code section 402 hearing concerning the admissibility of defendant's jailhouse confession: On March 26, 2009, Detective Mark Lillienfeld and his partner, Detective Kenney, interviewed defendant while he was in custody at the Twin Towers Correctional Facility regarding the

February 8, 2009 murder. They advised him of his rights under *Miranda*,[2] and he did not invoke his rights or request counsel.

Defendant had been sentenced to state prison on unrelated gun charges three days before the interview. He was awaiting transfer to the Department of Corrections, and the Sheriff's Department did nothing to impede the transfer. There was no delay in defendant leaving county custody caused by the investigators.

During the interview, defendant admitted membership in the Mexicans for Life street gang. Defendant was not restrained during the interview, and the detectives did not have their guns. Defendant was "courteous, polite, almost jovial" during the interview. He laughed and was responsive to the detective's questions. He did not claim any responsibility for the 2009 murder the detectives were investigating. The interview lasted 20 minutes.

Detective Lillienfeld told defendant that he and his partner were going to "present the facts of the case to the District Attorney's Office and that [they] believed there was sufficient evidence where a charge would be filed against him charging him with murder." He informed defendant that he was being transferred to the Compton Courthouse to be charged for murder the following day. Lillienfeld did this for the purpose of "plant[ing] a seed in [defendant's] mind of . . . what information, evidence [he has] in the case that's incriminating to them and in the hopes that, as the investigation furthers, perhaps they'll discuss that with somebody or they'll do something that will be incriminating." He wanted to prepare defendant for an undercover operation planned for the following day. Lillienfeld did not place defendant under arrest for murder because he was already in custody. However, there is a form called an "additional charge form" which can be used to link new charges to someone who is already in custody. The Compton Courthouse is where the murder case against defendant would have been filed, however, no case was brought against him on March 27, 2009. The information was not filed until April 24, 2009.

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2 *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

Detective Lillienfeld briefed the undercover detectives on the state of the murder investigation and the evidence they had.

On March 27, 2009, Detectives Avina and Beltran posed as inmates. They were placed in a holding cell with defendant at the Compton Courthouse. Avina did not claim any gang membership. Beltran claimed to be from Garrity, an East Los Angeles gang. Defendant did not appear scared. The three started talking about where they grew up, where their families were from, and where they lived. Neither detective ever threatened defendant, nor implied that he had to talk to them. They talked over the course of several hours. Defendant immediately discussed the murders the detectives were investigating. He never indicated that he did not want to talk to the undercover detectives. He did express concern that the cell might be equipped with a hidden recording device. To put defendant at ease, the detectives described crimes they had committed. The conversation with defendant was relaxed and jovial. When defendant intimated that the cell was wired by putting his finger to his ear, Avina laughed and joked that "maybe the mic's in the roll of toilet paper." The cell was equipped with a recording device, and their exchange was recorded.

Defendant sought to exclude his recorded statements on grounds substantially similar to those now raised on appeal. The trial court disagreed, concluding that defendant had no Sixth Amendment right to counsel on the new charges at the time of the undercover operation, that he was not unlawfully detained when he was moved to the Compton Courthouse because he was already in custody on a different charge, and that "[t]here does not appear to be any coercion . . . . [¶] . . . based on the totality of the circumstances, there weren't the inherent pressures of a police agency putting officers talking to him and pulling out involuntary statements."

Defendant also sought to sever trial of the 2007 and 2009 crimes. The People argued the crimes were properly joined because of overlapping gang evidence, and because defendant confessed to both crimes to detectives during the same undercover operation. The trial court denied the motion, finding that there was cross-admissible

gang and jailhouse confession evidence, and that it did not "seem like one case is . . . substantially stronger than the other."

DISCUSSION

Defendant contends: (1) he was denied due process by "law enforcement's manipulation of the date of the filing of the complaint," reasoning that when undercover deputies questioned him there was enough evidence to charge him, and therefore he was unfairly deprived of his right to counsel; (2) he was illegally detained when deputies transferred him from jail to the Compton Courthouse to conduct an undercover operation; (3) his confession to undercover deputies was coerced; (4) the trial court abused its discretion when it failed to sever trial of the 2007 and 2009 crimes; and (5) he received improper restitution and parole revocation fines and too few custody credits.

A. *Due Process*

Defendant contends his due process rights were violated by the undercover operation at the Compton Courthouse, reasoning that law enforcement strategically delayed filing charges against him for the murders, and that "[b]y delaying the filing of charges until appellant confessed to the undercover officers, under existing constitutional precedent, law enforcement exploited its ability to deny appellant access to counsel." The Sixth Amendment prohibits the government from deliberately eliciting incriminating statements from a defendant in the absence of counsel, and from knowingly exploiting an opportunity to confront a defendant without counsel. (*Maine v. Moulton* (1985) 474 U.S. 159, 176; *People v. Frye* (1998) 18 Cal.4th 894, 991.) The government is also prohibited from using undercover agents to deliberately elicit incriminating statements from an accused in contravention of the Sixth Amendment right to counsel. (*Massiah v. United States* (1964) 377 U.S. 201, 206; *People v. Webb* (1993) 6 Cal.4th 494, 526.) However, the Sixth Amendment right to counsel attaches "at the ' "initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." ' [Citation.]" (*People v. Webb, supra,* at

p. 526.) Here, when the recorded conversation took place, adversary judicial criminal proceedings had not yet been initiated, and the Sixth Amendment right to counsel had not attached. (*People v. Webb, supra*, at p. 527; *People v. Wader* (1993) 5 Cal.4th 610, 636.)

Defendant acknowledges that the right to counsel does not attach until charges are filed, but posits that the strategic delay of the filing of charges violated his right to due process. While it is true that " '[d]elay in prosecution that occurs before the accused is arrested or the complaint is filed may constitute a denial of the right to a fair trial and to due process of law under the state and federal Constitutions,' " (*People v. Boysen* (2007) 152 Cal.App.4th 1409, 1419-1420) the only alleged prejudice from the delay was that detectives were able to bolster their investigation by tricking defendant into incriminating himself. "A court should not second-guess the prosecution's decision regarding whether sufficient evidence exists to warrant bringing charges. 'The due process clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor's judgment as to when to seek an indictment. . . . Prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt.' " (*People v. Nelson* (2008) 43 Cal. 4th 1242, 1256.) From the record before us, we cannot say as a matter of law that there was adequate evidence to support the filing of an information at the time of the undercover operation, or that prosecutors improperly delayed the filing of charges. Due process " 'protects a criminal defendant's interest in fair adjudication by preventing unjustified delays that weaken the defense through the dimming of memories, the death or disappearance of witnesses, and the loss or destruction of material physical evidence.' " (*Id.* at p. 1250.) It does not, as defendant urges, protect against minimal delays in the filing of charges necessitated by the need to thoroughly investigate suspected crimes.

B. *Illegal Detention*

At trial, defendant moved to suppress defendant's jailhouse confession on Fourth Amendment grounds, reasoning the statements were the "fruit of an illegal and

unauthorized detention." Defendant contends that he was illegally detained when he was moved from the Twin Towers jail facility to the Compton Courthouse for the purpose of conducting the undercover operation. Defendant reasons he "was in custody in March 2009 pursuant [*sic*] the statute that authorized his incarceration on the weapons charge. In March 2009 the state had no authority to imprison or detain appellant on the March 2007 and February 2009 crimes alleged in this case until the state lawfully arrested him for those crimes. . . . The state had no authority under [defendant's] sentence on the weapons charge to detain him on the unrelated charges of this case." As defendant admits, he was in the custody of the Sheriff's Department at the time of the undercover operation. County jails overseen by sheriffs are used to detain people charged with crimes and awaiting trial, as well as to confine people sentenced to imprisonment upon conviction. (Pen. Code, § 4000.) Holding cells at courthouses also fall under the control of the sheriff. (See, e.g., *People v. Carter* (1981) 117 Cal.App.3d 546, 549-550.) Because defendant was already in custody, we can see no meaningful distinction between questioning defendant at the Twin Towers jail facility or at the Compton Courthouse. The Fourth Amendment protects citizens from arbitrary and unreasonable searches and seizures. (*People v. Souza* (1994) 9 Cal.4th 224, 229.) A "seizure" triggering the protection of the Fourth Amendment occurs when government actors have, "by means of physical force or show of authority . . . in some way restrained the liberty of a citizen." (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16.) Because defendant's freedom was already curtailed by his lawful incarceration, defendant's claim that he was somehow "deprived of liberty" when he was taken to the Compton Courthouse is unpersuasive.

C. *Coercion*

Defendant next argues that his statements to undercover detectives were coerced. He acknowledges that "[c]onversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*." (*Illinois v. Perkins* (1990) 496 U.S. 292, 296 [undercover officer posing as a fellow inmate need not provide *Miranda* warnings before asking questions likely to elicit an incriminating response].) This is because "[t]he

essential ingredients of a 'police-dominated atmosphere' and compulsion are not present when an incarcerated person speaks freely to someone whom he believes to be a fellow inmate." (*Ibid.*; see also *People v. Williams* (1988) 44 Cal.3d 1127, 1142 ["When a defendant talks to a fellow inmate, the coercive atmosphere of custodial police interrogation is absent"].)

He contends, however, that his jailhouse confession was involuntary because he was reluctant to talk, and the detectives' assurances that the cell was not wired lulled him into admitting his crimes. He contends he would not have made the inculpatory statements if he had known he was being recorded, and that the detectives "exerted improper influence over [defendant] when they led him to believe the room was not wired." We disagree.

"*Miranda* was not meant to protect suspects from boasting about their criminal activities in front of persons whom they believe to be their cellmates." (*Illinois v. Perkins*, *supra*, 496 U.S. at p. 298.) Defendant has not suggested, nor does the record support, that the detectives posing as inmates used physical force or threats to make him talk. His claim that the atmosphere of his confinement was coercive, although certainly true in a general sense, would be just as true whether the inmates were imposters or real criminals. The record shows that defendant freely spoke about his criminal activities, and that the atmosphere was congenial and relaxed, with defendant and the detectives laughing often. The detectives never led defendant to believe that he was not being recorded. The detectives joked about it, but encouraged defendant to look for a microphone. Even though defendant was concerned that he was being recorded, he spoke anyway. He cannot now complain about the consequences of his folly.

D. *Joinder/Severance*

Defendant contends the trial court abused its discretion when it denied defendant's motion to sever the trial of the 2007 and 2009 crimes. A trial court may permit offenses that are of the same class of crime, or are connected in their commission, to be charged and tried together. (Pen. Code, § 954.) Even when joinder is permissible under section

954, severance may be constitutionally required if joinder of the offenses would be so prejudicial that it would deny defendant a fair trial. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1243-1244 (*Musselwhite*).) "Whether offenses properly are joined pursuant to section 954 is a question of law and is subject to independent review on appeal; the decision whether separate proceedings are required in the interests of justice is reviewed for an abuse of discretion." (*People v. Cunningham* (2001) 25 Cal.4th 926, 984.)

The parties agree that the murders are of the same class; joinder was thus proper. However, severance may still be required if joinder would be so prejudicial that it would render the trial unfair. (*Musselwhite*, *supra*, 17 Cal.4th at pp. 1243-1244.) A defendant "must make a ' "*clear showing of prejudice* to establish that the trial court abused its discretion." ' " (*People v. Soper* (2009) 45 Cal.4th 759, 774 (*Soper*); see also *People v. McKinnon* (2011) 52 Cal.4th 610, 630 (*McKinnon*).) Although we review the particular circumstances of each case, "'certain criteria have emerged to provide guidance in ruling upon and reviewing a motion to sever trial.' [Citation.]" (*Soper*, *supra*, 45 Cal.4th at p. 774.)

Initially, we consider whether evidence would be cross-admissible if the offenses were tried separately. (*Soper*, 45 Cal.4th at p. 774.) If evidence of one crime would be admissible at a separate trial of the other crime, any potential prejudice is ordinarily dispelled. (*McKinnon*, *supra*, 52 Cal.4th at p. 630.) However, lack of cross-admissibility is not, by itself, sufficient to demonstrate prejudice and prohibit joinder. (*Id.* at pp. 630-631.) Here, it is clear that the gang evidence, which was probative of defendant's motive, was cross-admissible. Gang evidence may be relevant to "identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime." (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1049.) Both victims were potentially members of a rival gang, based on their presence in rival gang territory and their manner of dress. Defendant contends that the gang evidence is not cross-admissible, relying on *Williams v. Superior Court* (1984) 36 Cal.3d 441, where joinder was found to be improper. In *Williams*, the court concluded that just because the

two murders were gang related did not render the gang evidence cross-admissible under Evidence Code section 1101. (*Williams*, at p. 450.) However, *Williams* was a capital case, where "it is the joinder *itself* which gives rise to the special circumstances allegation of multiple murder." (*Id*. at p. 454.) Therefore, "the court [had to] analyze the severance issue with a higher degree of scrutiny and care than is normally applied in a noncapital case." (*Ibid*.) *Williams* also predated Penal Code section 186.22, so its treatment of gang evidence is inapposite.

We also consider whether the benefits of joinder outweigh the " 'spill-over' " effect that the evidence of other crimes may have on the jury. (*Soper*, *supra*, 45 Cal.4th at p. 775.) In making this determination, we consider whether some of the charges are likely to inflame the jury against the defendant. (*Ibid.*) We also consider whether a weak case is joined with a strong case so that the totality of the evidence could have altered the outcome as to some or all of the charges. (*Ibid*.)

Defendant contends that joinder was likely to inflame the jury, reasoning that the gang evidence was likely to give the jury an impression of "ongoing gang rivalry and retaliation." However, the crimes were similarly brutal, and their joinder was unlikely to give the impression of an ongoing gang war, and therefore unlikely to inflame the jury. Defendant also contends that the evidence for the 2007 case was weaker, and thus the outcome was likely tainted by its joinder to the stronger 2009 case. Defendant is mistaken. There was strong evidence for the 2007 case, consisting of a car linked to defendant matching the description provided by a witness, gun powder residue, bullets found at defendant's house, and defendant's jailhouse confession. Neither incident was significantly stronger or more inflammatory than the other.

"[T]he benefits of joinder are not outweighed—and severance is not required—merely because properly joined charges might make it more difficult for a defendant to avoid conviction compared with his or her chances were the charges to be separately tried." (*Soper*, *supra*, 45 Cal.4th at p. 781.) Based on the facts before the trial court, we conclude the court did not abuse its discretion in denying severance.

E. *Restitution and Parole Fines*

Respondent concedes that defendant was improperly charged separate restitution and parole fines of $10,000 each for the murders. Penal Code sections 1202.4 and 1202.45 require that fines be imposed in "every case." Separate charges still constitute "one case" for purposes of imposing of fines and fees. (*People v. Ferris* (2000) 82 Cal.App.4th 1272, 1277-1278.) Therefore, since this matter was a single case, only one set of fines should have been imposed, and the abstract of judgment should be corrected to eliminate the additional restitution and parole fines.

F. *Custody Credits*

Defendant was sentenced on January 11, 2011. He received 689 days of custody credit, consisting of 689 actual presentence days in custody. This number was calculated based on an arrest date of February 21, 2009, supplied by defendant's counsel at the sentencing hearing. On appeal, defendant relies on a supposed arrest date of February 2, 2008, noted in his probation report to conclude that he was given an improper amount of custody credits, reasoning that he should have received 1,075 days of credit. Respondent contends that defendant should have received 690 days based on the arrest date reported by defense counsel at the sentencing hearing (the court failed to include the day of sentencing in the calculation). (See Pen. Code, § 2900.5; *People v. Smith* (1989) 211 Cal.App.3d 523, 526.) However, respondent contends that defendant is entitled to only 628 days of custody credit, because the reported arrest date of February 21, 2009, is inaccurate as defendant was already in custody on unrelated charges. He contends credits should accrue from filing of the information on April 24, 2009.

The February 2, 2008 arrest date in the probation report is clearly a typographical error, because the second murder occurred on February 8, 2009, and therefore it is obvious that defendant was not in custody then. Defendant concedes the error, but urges that the case should be remanded to the trial court to determine the date of arrest, concluding that the April 24, 2009 date suggested by respondent is arbitrary. We agree

that defendant should receive 628 days of custody credit, and disagree that the April 24, 2009 date is arbitrary. The information was filed on April 24, 2009, while defendant was already in custody in a different case. Detective Lillienfeld testified that defendant was not "arrested" on the new charges until the new information was filed. Therefore, remand is unnecessary, and the abstract of judgment should be modified to reflect 628 days of custody credit.

DISPOSITION

The judgment is affirmed as modified to reflect a total of 628 days custody credit, as well as to reduce the restitution and parole fines to $10,000 each. The superior court is directed to prepare an amended abstract of judgment, and shall forward a certified copy of the same to the Department of Corrections and Rehabilitation.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J.

FLIER, J.