Filed 3/5/15 P. v. Castillo CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN AURELIO CASTILLO, Defendant and Appellant.	B253791 (Los Angeles County Super. Ct. No. BA406332)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Modified and, as so modified, affirmed.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Steven E. Mercer and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Juan Aurelio Castillo appeals his convictions for possession for sale of marijuana, tetrahydrocannabinol, and methamphetamine; possession of a firearm by a felon; and possession of heroin. Castillo contends the trial court abused its discretion by admitting evidence of his prior conviction for possession of cocaine base; two of his convictions for possession for sale should have been stayed pursuant to Penal Code section 654;[1] and a firearm enhancement must be stricken because the verdict form stated the incorrect statutory subdivision. Castillo also requests that we review the sealed record of the trial court's *Pitchess* examination[2] of police personnel records to determine whether the court abused its discretion by failing to order sufficient disclosure. (*People v. Mooc* (2001) 26 Cal.4th 1216.) We order a clerical error in the abstract of judgment corrected, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*

a. *People's evidence*

On January 1, 2013, at approximately 6:00 p.m., Los Angeles County Deputy Sheriff Alejandro Lomeli was on patrol in East Los Angeles. As he drove his patrol car down Williamson Avenue, Lomeli saw a pedestrian walk past a white van parked on the street. A person in the van, who was wearing a gray sweater, reached his arm out to the pedestrian. The men appeared to exchange something. Lomeli believed the men had conducted a hand-to-hand drug sale. When Lomeli made eye contact with the pedestrian and began to exit his patrol car, the pedestrian tossed to the ground a small baggie containing methamphetamine. Lomeli detained the pedestrian.

Lomeli then looked inside the van. Castillo and another man were seated inside, on a bench. A strong odor of fresh marijuana emanated from the van's interior. When Lomeli ordered Castillo out of the van, he noticed a bulge in Castillo's waistband. A pat

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

[2] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

search revealed that the bulge was a loaded .40-caliber semiautomatic handgun. Lomeli arrested Castillo and the second man. The second man was wearing a gray sweater. A booking search of Castillo revealed a plastic bag of tar heroin in his front pocket, a cellular telephone, and approximately $484 in cash. The second man was in possession of a digital scale, two cellular telephones, and $26 in cash.

Inside the van, deputies discovered over two pounds of marijuana, contained in bags and jars; 173 grams of concentrated cannabis; 84.5 grams of tetrahydrocannabinol; and a large roll of plastic wrap. Inside a light fixture, Lomeli found baggies containing over 14.27 grams of methamphetamine. Lomeli did not find pipes, rolling papers, needles, or a medical marijuana card on Castillo's person or in the van, and Castillo did not appear to be under the influence of any controlled substance. The van was not registered to either Castillo or the second man.

An expert opined that the quantities of the controlled substances in the van indicated they were possessed for sale rather than for personal use. When given a hypothetical based on the facts of the case, the expert opined that the marijuana, tetrahydrocannabinol, concentrated cannabis, methamphetamine, and heroin were possessed for sale.

The parties stipulated that in 2008 Castillo was convicted of possession of a controlled substance for sale.

b. *Defense evidence*

Carl Lussow, a long-time friend of Castillo's, testified that he was looking out the window of his mother's house and observed the arrests of Castillo and the other man. He saw officers enter the van and remove Castillo and the second man, pat them both down, and place them in patrol cars. He did not see an officer recover a gun or anything else from Castillo. After Castillo was in the patrol car, six or seven officers searched the van. Approximately 30 minutes after Castillo had been pat searched, one of the officers searching the van stated, " 'I just found a gun.' "

Several latent fingerprints were obtained from the drugs found in the van. None of the latent prints were Castillo's.

2. *Procedure*

Trial was by jury. Castillo was convicted of possession for sale of marijuana (Health & Saf. Code, § 11359), tetrahydrocannabinol (Health & Saf. Code, § 11351), and methamphetamine (Health & Saf. Code, § 11378), all controlled substances; possession of a firearm by a felon (§ 29800, subd. (a)(1)); and possession of a controlled substance, heroin (Health & Saf. Code, § 11350, subd. (a)). The jury additionally found Castillo was personally armed with a handgun during commission of the possession-for-sale offenses (§ 12022) and had suffered a prior conviction for possession of cocaine base for sale. In a bifurcated proceeding, the trial court found Castillo had suffered a prior "strike" conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), had served a prior prison term within the meaning of section 667.5, subdivision (b), and had suffered two prior narcotics-related convictions (Health & Saf. Code, § 11370.2, subds. (a), (c)). The trial court struck Castillo's prior "strike" conviction and sentenced him to a term of 18 years 8 months in prison. It imposed a restitution fine, a suspended parole restitution fine, a court operations assessment, and a criminal conviction assessment. Castillo appeals.

DISCUSSION

1. *The trial court did not abuse its discretion by admitting evidence that Castillo had suffered a prior conviction for possession of cocaine base for sale.*

a. *Additional facts*

Prior to trial, the People sought to admit evidence Castillo had suffered two prior convictions: a 2008 conviction for possession of cocaine base for sale, and a 1993 conviction for possession of methamphetamine for sale. The People averred the prior convictions were admissible under Evidence Code section 1101, subdivision (b). The defense objected that the evidence was irrelevant and highly prejudicial. The trial court excluded the 1993 conviction because it was remote in time. However, it concluded evidence of the 2008 conviction was relevant and admissible under Evidence Code section 1101, subdivision (b), to prove knowledge. Over defense counsel's objection, the prosecutor was later allowed to argue the evidence also proved intent. The trial court instructed the jury that it could consider the evidence on the issues of both knowledge

and intent, but for no other purpose. (CALCRIM Nos. 375,[3] 3100.[4])

Castillo contends the trial court abused its discretion by admitting the evidence, and its ruling infringed upon his federal due process rights. We disagree.

b. *Applicable legal principles*

Only relevant evidence is admissible. (Evid. Code, § 350.) Evidence is relevant if it has a tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code, § 210; *People v. Mills* (2010) 48 Cal.4th 158, 193; *People v. Lee* (2011) 51 Cal.4th 620, 642.) A trial court has broad discretion in determining whether evidence is relevant and whether Evidence Code section 352 precludes its admission, but lacks discretion to admit irrelevant evidence. (*People v. Cowan* (2010) 50 Cal.4th 401, 482; *People v. Williams* (2008) 43 Cal.4th 584, 634.)

Evidence that a defendant committed misconduct other than that currently charged

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[3] CALCRIM No. 375, as provided to the jury, stated in pertinent part: "The People presented evidence that the defendant was convicted of the crime of possession for sale of a controlled substance on February 20, 2008 in case BA326274. [¶] You may consider this prior conviction only if the People have proved by a preponderance of the evidence that the defendant in fact was so convicted. . . . [¶] If you decide that the defendant was so convicted, you may, but are not required to, consider that evidence for the limited purpose of deciding whether or not: [¶] The defendant's alleged actions in this case were not the result of mistake or accident; [¶] or the defendant's knowledge when he acted in this case. [¶] Do not consider this evidence for any other purpose. [¶] If you conclude that the defendant committed the uncharged prior offense, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the charged offenses."

[4] CALCRIM No. 3100 provided in pertinent part: "If you find the defendant guilty of a crime, you must also decide whether the People have proved the additional allegation that the defendant was previously convicted of the offense of possession for sale of a controlled substance, cocaine base, in violation of Health & Safety Code section 11351.5 on February 20, 2008, in Los Angeles Superior Court case No. BA326274. [¶] Consider the evidence presented on this allegation only when deciding whether the defendant was previously convicted of the crime alleged or for the limited purpose of assessing the defendant's knowledge and intent regarding the charged crimes. Do not consider this evidence as proof that the defendant committed any of the crimes with which he is currently charged or for any other purpose."

is generally inadmissible to prove he or she had a propensity to commit the charged crime. (Evid. Code, § 1101, subd. (a);[5] *People v. Kelly* (2007) 42 Cal.4th 763, 782; *People v. Rogers* (2009) 46 Cal.4th 1136, 1165.) However, such evidence is admissible if it is relevant to prove, among other things, intent, knowledge, identity, or the existence of a common design or plan. (Evid. Code, § 1101, subd. (b); *People v. Carter* (2005) 36 Cal.4th 1114, 1147; *People v. Ewoldt* (1994) 7 Cal.4th 380, 400; *People v. Spector* (2011) 194 Cal.App.4th 1335, 1374.) When reviewing the admission of evidence of other offenses, a court must consider: (1) the materiality of the fact to be proved or disproved; (2) the probative value of the other crimes evidence to prove or disprove the fact; and (3) the existence of any rule or policy requiring exclusion even if the evidence is relevant. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667.)

Even if other crimes evidence is admissible under Evidence Code section 1101, subdivision (b), it should be excluded under Evidence Code section 352 if its probative value is substantially outweighed by undue prejudice. (*People v. Thomas* (2011) 52 Cal.4th 336, 354.) Because evidence relating to uncharged misconduct may be highly prejudicial, its admission requires careful analysis. (*People v. Fuiava*, *supra*, 53 Cal.4th at p. 667; *People v. Ewoldt*, *supra*, 7 Cal.4th at p. 404.) " ' " 'Prejudice' as contemplated by [Evidence Code] section 352 is not so sweeping as to include any evidence the opponent finds inconvenient. Evidence is not prejudicial, as that term is used in a section 352 context, merely because it undermines the opponent's position or shores up that of

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[5] Evidence Code section 1101 provides in pertinent part: "(a) Except as provided in this section and in Sections 1102, 1103, 1108, and 1109, evidence of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of specific instances of his or her conduct) is inadmissible when offered to prove his or her conduct on a specified occasion. [¶] (b) Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act did not reasonably and in good faith believe that the victim consented) other than his or her disposition to commit such an act."

the proponent." ' " (*People v. Scott* (2011) 52 Cal.4th 452, 490.) Evidence is prejudicial under section 352 if it uniquely tends to evoke an emotional bias against the defendant and has little effect on the issues. (*Id.* at p. 491.)

We review the trial court's rulings under Evidence Code sections 1101 and 352 for abuse of discretion. (*People v. Fuiava, supra*, 53 Cal.4th at pp. 667-668; *People v. Scott, supra*, 52 Cal.4th at p. 491; *People v. Thomas, supra*, 52 Cal.4th at pp. 354-355.)

c. *The trial court did not abuse its discretion by admitting evidence of the prior conviction.*

Applying the foregoing principles here, we discern no abuse of discretion. To prove possession for sale, the People had to establish, among other things, that Castillo or his accomplice unlawfully possessed the controlled substance; knew of its presence and nature as a controlled substance; and intended to sell it. (*People v. Montero* (2007) 155 Cal.App.4th 1170, 1175-1176; CALCRIM No. 2302.) To prove Castillo was guilty as an aider and abettor, the People were required to show: (1) the perpetrator committed the crime; (2) Castillo knew that the perpetrator intended to commit the crime; (3) before or during commission of the crime, Castillo intended to aid and abet the perpetrator in committing the crime; and (4) Castillo's words or conduct did in fact aid and abet the commission of the crime. (CALCRIM No. 401.)

Thus, to prove Castillo's guilt, the People had to show both knowledge and intent. The defense theory was that Castillo was "simply in the van" and might have been purchasing drugs, but was not part of the narcotics sales operation. Accordingly, both the knowledge and intent elements were crucial, disputed issues. Where a defendant's knowledge of the narcotic contents of a controlled substance or his intent to sell are at issue, evidence of prior narcotics offenses is generally admissible to show his or her knowledge and intent. (*People v. Pijal* (1973) 33 Cal.App.3d 682, 691; *People v. Williams* (2009) 170 Cal.App.4th 587, 607 ["In prosecutions for drug offenses, evidence of prior drug use and prior drug convictions is generally admissible under Evidence Code section 1101, subdivision (b), to establish that the drugs were possessed for sale rather

than for personal use and to prove knowledge of the narcotic nature of the drugs."].) Thus, the fact of Castillo's prior conviction was both relevant and highly probative.

Further, the probative value of the evidence was not substantially outweighed by the danger of undue prejudice. The jury was given no information about the circumstances of the prior conviction. Thus, evidence of the prior crime was no more inflammatory than the circumstances of the charged crime. (See *People v. Eubanks* (2011) 53 Cal.4th 110, 144 [the potential for prejudice is decreased when testimony describing the defendant's uncharged acts is no stronger or more inflammatory than the testimony concerning the charged offenses].) The trial court gave limiting instructions informing the jury that the evidence could be considered only on the issues of knowledge and intent, and could not be used to infer Castillo had a criminal disposition. These instructions mitigated the possibility of prejudice. (*People v. Lewis* (2001) 25 Cal.4th 610, 637.) The prosecutor did not suggest, during argument, that the prior conviction showed Castillo had a propensity to commit similar offenses, and defense counsel's argument stressed that the evidence could be considered only for a limited purpose.

Castillo, however, argues that the evidence was improperly admitted for two reasons. First, he urges that because he did not admit selling the drugs, the prior conviction was inadmissible to prove intent. As explained by *Ewoldt*: "Evidence of intent is admissible to prove that, if the defendant committed the act alleged, he or she did so with the intent that comprises an element of the charged offense. 'In proving intent, the act is conceded or assumed; what is sought is the state of mind that accompanied it.' [Citation.]" (*People v. Ewoldt*, *supra*, 7 Cal.4th at p. 394, fn. 2, italics omitted; *People v. Thomas*, *supra*, 52 Cal.4th at p. 355.) But Castillo reads *Ewoldt* too narrowly. Here, it *was* conceded or assumed that someone in the van was selling drugs, and it was undisputed that Castillo was in the van when the sale transpired. The issue before the jury was whether Castillo was in the van with the intent to aid and abet the drug sales, or was present for some other purpose. Under these circumstances, the evidence was properly admitted under *Ewoldt* to show intent.

Second, Castillo contends that the prior conviction evidence lacked probative value on the issue of knowledge because it was cumulative. (See *Ewoldt, supra,* 7 Cal.4th at pp. 405-406 [where other crimes evidence is merely cumulative regarding an issue not reasonably subject to dispute, its prejudicial effect will often outweigh its probative value]; *People v. Leon* (2008) 161 Cal.App.4th 149, 168-169.) Castillo urges that given the large quantities of drugs in the van, the fresh marijuana odor noted by Deputy Lomeli, Castillo's own possession of heroin, and the fact he "arguably witnessed the drug sale," he "clearly knew the substances in the van were narcotics." However, knowledge of the character of the controlled substances was not the only type of knowledge the People were required to prove. To show Castillo was an aider and abettor, the People had to establish, inter alia, that Castillo knew the perpetrator intended to commit the crime. (See CALCRIM No. 401.) The evidence was neither undisputed nor cumulative on this point. Indeed, during closing argument defense counsel argued: "[Y]ou have to find that the perpetrator committed the crime. That other person committed a crime. He sold it. *You have to find that Mr. Castillo knew that the perpetrator intended to commit the crime. We don't have any evidence of that.*" (Italics added.) Thus, the evidence was not offered on an undisputed issue, and was not cumulative.

In sum, there was no error and no violation of Castillo's due process rights. (*People v. Lindberg* (2008) 45 Cal.4th 1, 26.)[6]

2. *The trial court was not required to stay counts 2 and 3 pursuant to section 654.*

The trial court sentenced Castillo on counts 1 through 3 as follows. On count 2, the base count, possession of tetrahydrocannabinol for sale (Health & Saf. Code, § 11351), the court imposed the upper term of 4 years, plus 5 years for the section 12022 arming enhancement. On count 1, possession of marijuana for sale (Health & Saf. Code, § 11359), and count 3, possession of methamphetamine for sale (Health & Saf. Code,

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[6] Given our resolution of this issue, we need not reach the question of whether admission of the evidence was prejudicial.

§ 11378) it imposed consecutive terms of one-third of the midterm, eight months. The court stayed sentence on the section 12022 arming enhancements on counts 1 and 3. The court opined that consecutive sentences were appropriate because Castillo was "running a smorgasbord of drugs in the van that he was arrested in. He possessed for sale different drugs, and each drug involved a separate decision to possess for sale that particular drug . . . . "

Castillo contends the court erred by failing to stay sentence on counts 1 and 3 entirely, because his possession of all three substances for sale was "a single physical act." He is incorrect.[7]

Section 654, subdivision (a), provides in pertinent 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 bars multiple punishment for separate offenses arising out of a single occurrence where all of the offenses were incident to one objective. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1368; *People v. Latimer* (1993) 5 Cal.4th 1203, 1208; *People v. Calderon* (2013) 214 Cal.App.4th 656, 661.) Whether section 654 applies is a question of fact for the trial court, and its findings will be upheld if there is substantial evidence to support them. (*People v. Kurtenbach* (2012) 204 Cal.App.4th 1264, 1289; *People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.)

It is settled that in prosecutions for drug offenses, section 654 does not bar separate punishment for the simultaneous possession of different controlled substances. (See *People v. Monarrez* (1998) 66 Cal.App.4th 710, 714; *People v. Barger* (1974)

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[7] This issue is cognizable on appeal despite Castillo's failure to object on this ground below. Because a trial court acts in excess of its jurisdiction and imposes an unauthorized sentence when it erroneously stays or fails to stay execution of a sentence under section 654, the absence of an objection does not waive or forfeit the issue. (*People v. Scott* (1994) 9 Cal.4th 331, 354, fn. 17; *People v. Bui* (2011) 192 Cal.App.4th 1002, 1013, fn. 15; *People v. Le* (2006) 136 Cal.App.4th 925, 931.)

40 Cal.App.3d 662, 672; *People v. Lockwood* (1967) 253 Cal.App.2d 75, 82-83.) In *Monarrez*, for example, the defendant was convicted of possession of both heroin and cocaine for sale. He urged that both offenses involved "essentially the same act," and separate punishment was therefore barred by section 654. (*Monarrez*, at p. 712.) *Monarrez* rejected this contention, explaining: " '[i]t would be absurd to hold that a criminal who deals in one contraband substance can expand the scope of his inventory without facing additional consequences' " and "[a]lthough the overall intent is always to make money, the objectives of selling cocaine and heroin are separate." (*Id.* at pp. 714-715.) Further, the evidence supported a finding that defendant had been engaged in multiple sales and intended to make multiple sales of the narcotics that he possessed. (*Id.* at p. 715; see also *People v. Blake* (1998) 68 Cal.App.4th 509, 511 [section 654 did not bar multiple punishment for a defendant convicted of simultaneous transportation of both methamphetamine and marijuana in his car, where the record supported an inference he intended to sell the drugs to different customers]; *People v. Barger*, *supra*, 40 Cal.App.3d at p. 672 ["California courts have uniformly held that section 654 does not preclude multiple punishment for simultaneous possession of various narcotic drugs"].)

Castillo contends, however, that the foregoing principles must be reexamined in light of the California Supreme Court's decision in *People v. Jones* (2012) 54 Cal.4th 350. There, the defendant, a convicted felon, carried a loaded and concealed firearm. For this single act, he was convicted of three offenses: possession of a firearm by a felon, carrying a concealed and unregistered firearm, and carrying an unregistered loaded firearm in public. (*Id.* at p. 352.) *Jones* concluded that "[s]ection 654 prohibits multiple punishment for a single physical act that violates different provisions of law." (*Id.* at p. 358.) Therefore, "a single possession or carrying of a single firearm on a single occasion may be punished only once under section 654." (*Id.* at p. 357.)

In coming to this conclusion, *Jones* examined and overruled its earlier decision in *In re Hayes* (1969) 70 Cal.2d 604. (*People v. Jones, supra,* 54 Cal.4th at p. 358.) In *Hayes*, a divided court had held section 654 did not prohibit multiple punishment for a defendant convicted of driving while intoxicated and driving with an invalid license.

(*Jones*, at p. 355.) The *Hayes* majority had concluded driving with a suspended license and driving while intoxicated were two separate and distinct criminal acts, despite the fact they were committed simultaneously. (*In re Hayes*, at p. 611.) *Jones* explained that the *Hayes* rationale would permit multiple punishment in many cases in which a single physical act is made punishable by different provisions of law. (*Jones*, at p. 356.) *Jones* reasoned: "It might make sense to punish these distinct evils separately, and a criminal justice system could logically and reasonably do so. But doing so would be contrary to section 654's plain language, which prohibits multiple punishment for '[a]n act or omission that is punishable in different ways by different provisions of law.' " (*Jones*, at p. 356.)

Jones "recognize[d] that what is a single physical act might not always be easy to ascertain." (*People v. Jones*, *supra*, 54 Cal.4th at p. 358.) "In some situations, physical acts might be simultaneous yet separate for purposes of section 654. For example, in *Hayes*, both the majority and the dissenters agreed that, to use Chief Justice Traynor's words, 'simultaneous possession of different items of contraband' are separate acts for these purposes. [Citation.] As Chief Justice Traynor explained, 'the possession of one item is not essential to the possession of another separate item. One does not possess in the abstract; possession is meaningless unless something is possessed. The possession of each separate item is therefore a separate act of possession.' [Citation.] *We do not intend to cast doubt on the cases so holding*." (*Jones*, at p. 358, italics added.)

Accordingly, *Jones* does not support Castillo's argument. Possession of each type of contraband for sale here—the tetrahydrocannabinol, the marijuana, and the methamphetamine—was a separate act for purposes of section 654. Unlike in *Jones*, where the defendant's single act, possession of a single gun, was the basis for all three charges, here Castillo (or his accomplice) committed three separate acts: possession of marijuana, possession of tetrahydrocannabinol, and possession of methamphetamine. *Jones* expressly stated that it did not call into question authorities holding that multiple punishment for simultaneous possession of different items of contraband did not run afoul of section 654. Castillo argues that despite this statement, *Jones's* rationale

"strongly undermines" such cases. His contention is not well taken. *Jones*'s holding was clear, and we are not at liberty to disregard it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We think it unlikely the Supreme Court would have expressly stated one thing while actually meaning the opposite.

3. *Review of in camera examination of peace officer records*

Before trial, Castillo sought discovery of peace officer personnel records pursuant to *Pitchess v. Superior Court, supra,* 11 Cal.3d 531. The trial court found good cause for an in camera review of Deputy Lomeli' s records for complaints related to dishonesty. On April 11, 2013, the trial court conducted an in camera review. Castillo requests that we review the sealed transcript of the trial court's *Pitchess* review to determine whether the court abused its discretion by failing to order sufficient disclosure. (See *People v. Mooc, supra,* 26 Cal.4th 1216.)

Trial courts are vested with broad discretion when ruling on motions to discover peace officer records (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086), and we review a trial court's ruling for abuse (*People v. Mooc, supra,* 26 Cal.4th at p. 1228; *People v. Hughes* (2002) 27 Cal.4th 287, 330). We have reviewed the sealed transcript of the in camera hearing conducted on April 11, 2013. The transcript constitutes an adequate record of the trial court's review of any documents provided to it, and reveals no abuse of discretion. (*Mooc,* at p. 1228; *Hughes,* at p. 330.)

4. *Correction of the abstract of judgment*

As noted, Castillo was charged in count 1 with possession of marijuana for sale. The information further alleged that he was personally armed with a firearm during commission of the crime within the meaning of section 12022, subdivision (a)(1). That subdivision provides for a one-year enhancement when a defendant is armed with a firearm during the commission of any felony.

The verdict form for count 1, however, stated that the jury found Castillo was personally armed with a firearm during commission of the offense "within the meaning of Penal Code Section 12022(c)." Subdivision (c) provides for a three-, four-, or five-

year enhancement for defendants who are personally armed during commission of certain narcotics-related offenses. However, possession of marijuana for sale in violation of Health and Safety Code section 11359 is not among them.

Castillo contends that because the verdict form listed the incorrect subdivision of section 12022, the enhancement must be stricken. The People agree that the verdict form contains an error, but aver that the abstract of judgment should be corrected, rather than the enhancement stricken. The People are correct.

" ' " 'A verdict is to be given a reasonable intendment and be construed in light of the issues submitted to the jury and the instructions of the court.' " ' " (*People v. Camacho* (2009) 171 Cal.App.4th 1269, 1272.) The form of a verdict is immaterial provided the intention to convict of the crime charged is unmistakably expressed. (*Id.* at p. 1273; *People v. Jones* (1997) 58 Cal.App.4th 693, 710.) " '[T]echnical defects in a verdict may be disregarded if the jury's intent to convict of a specified offense within the charges is unmistakably clear, and the accused's substantial rights suffered no prejudice.' " (*Camacho*, at p. 1272.) Where the error is in the recording of the judgment, as opposed to in the rendering of the judgment, it is clerical error that may be disregarded or corrected. (*Id.* at p. 1273*; People v. Trotter* (1992) 7 Cal.App.4th 363, 370.)

For example, in *Trotter* the defendant was charged with personal use of a firearm pursuant to section 12022.5. The preprinted verdict forms referenced the correct statutory section, but used the incorrect language that the defendant was "armed" with a firearm. (*People v. Trotter, supra,* 7 Cal.App.4th at p. 369.) Upon discovering the error, the trial court amended the verdict forms to reflect the proper language. On appeal the defendant contended he was found guilty of being armed with a firearm, which under section 12022 could not be charged as an enhancement to the crime of assault with a deadly weapon. (*Trotter*, at p. 369.) *Trotter* concluded the trial court "did nothing more than correct clerical errors in the verdict *forms;* the court did not modify the verdicts themselves." (*Id.* at p. 369.) Noting that it has long been recognized that courts have authority to correct clerical errors in court documents, *Trotter* concluded the trial court was authorized to make the clerical corrections to the verdict forms. (*Id.* at p. 370.)

The same is true here. The jury's factual finding—that Castillo was personally armed with a firearm during commission of the offense—was clearly stated in the verdict form. The error in the instant matter was nothing more than a clerical error in regard to the correct subdivision. No violation of Castillo's rights is apparent. Accordingly, we order the abstract of judgment corrected to reflect the correct subdivision.[8]

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[8] Castillo also requests that we correct the abstract of judgment to accurately reflect his custody credits and to indicate that the section 12022, subdivision (c) enhancement imposed on count 3 was stayed pursuant to section 654. Castillo explains that the trial court has already granted his motion to make these corrections, but has not prepared an amended abstract of judgment. After this matter was submitted, this court received an amended abstract of judgment which reflects the requested corrections. Therefore, Castillo's request is now moot.

DISPOSITION

The clerk of the superior court is directed to modify the abstract of judgment to reflect that on count 1, a firearm enhancement was imposed pursuant to Penal Code section 12022, subdivision (a)(1), not subdivision (c), and to forward a copy of the corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

KITCHING, J.