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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. WHITTIER EM, Defendant and Appellant.	B295019 (Los Angeles County Super. Ct. No. NA101587)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed as modified and remanded with directions.

Law Offices of James Koester and James Koester, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Kristen J. Inberg, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant Whittier Em was convicted of attempting to murder two strangers, Daniel Estrada and Arturo Orozco. Prosecution witnesses testified that appellant was among a group of men who initiated a fistfight with Estrada and Orozco over Estrada's attempt to steal two bicycles, during which appellant shot both victims. Savon Moun, the owner of one bicycle and appellant's former codefendant, denied knowing appellant to be the shooter. However, Moun had identified appellant as the shooter when pleading no contest to felony assault, and the trial court read Moun's identification of appellant as the shooter into the record. Testifying in his defense, appellant denied being present during the shooting and preceding fight. A jury convicted appellant of the attempted murders, along with the unlawful possession of a firearm and ammunition.

On appeal, appellant contends: (1) the trial court prejudicially erred by failing to instruct the jury, sua sponte, on the heat of passion theory of attempted voluntary manslaughter; (2) the trial court prejudicially erred by failing to deliver, sua sponte, the standard cautionary instructions concerning testimony from a defendant's

accomplice; (3) the trial court erred by failing to stay, under Penal Code section 654, appellant's sentences for possession of the firearm used in the attempted murders and the ammunition loaded therein; and (4) the trial court's sentencing minute order and the abstract of judgment must be corrected to conform to the court's oral pronouncement of consecutive life terms on the attempted murder counts, which allowed for the possibility of parole. Respondent disputes the first two contentions but agrees with appellant on the latter two.

We modify the judgment to (1) stay appellant's sentences on counts three and four and (2) correct the sentencing minute order and the abstract of judgment to reflect a life term on count one and a consecutive life term on count two, rather than life terms without the possibility of parole. We otherwise affirm.

STATEMENT OF THE CASE

The state charged appellant with four counts: (1) the attempted willful, deliberate, and premeditated murder of Estrada, in violation of Penal Code sections 187, subdivision (a) and 664; (2) the attempted willful, deliberate, and premeditated murder of Orozco; (3) possession of a firearm by a felon, in violation of Penal Code section 29800, subdivision (a)(1); and (4) unlawful possession of ammunition, in violation of Penal Code section 30305, subdivision (a)(1). In connection with the attempted murder counts, the state specially alleged, pursuant to Penal Code

sections 12022.7, subdivision (a) and 12022.53, subdivision (d), that appellant personally and intentionally discharged a firearm and caused Estrada and Orozco great bodily injury.

A jury convicted appellant on all counts and found true the firearm-injury allegation. The court sentenced appellant to two consecutive life terms on the attempted murder counts, two consecutive terms of 25 years to life on the special circumstance allegations associated with those counts, a concurrent three-year term on count three, and a concurrent three-year term on count four. In the sentencing minute order and the abstract of judgment, appellant's sentences on counts one and two were recorded as life terms without the possibility of parole.

Appellant timely appealed.

PROCEEDINGS BELOW

A. *Prosecution Case*

1. *The Shooting*

The prosecution played video from the home of Savon Moun (appellant's former codefendant) on Gaviota Avenue in Long Beach.[1] The video showed that on April 6, 2015, Daniel Estrada (identified by his brother and an investigating officer) approached Moun's home and attempted to run off with two bicycles left outside. A man in

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[1] After this appeal was filed, this court requested and received the trial exhibits, including all of the video evidence described in this opinion. We have reviewed the video evidence, none of which had audio.

a blue shirt, followed by three other men, immediately ran after Estrada, and continued chasing him after he quickly dropped the bicycles.

Arturo Orozco testified that on the same day, he was skateboarding near Moun's home when a stranger (later identified as Estrada) ran toward him, pleading for help. Orozco saw a group of men pursuing Estrada and agreed to help him. The other men argued with Estrada about his alleged theft of a bicycle. The argument escalated into a fistfight, in which Orozco joined. During the fight, Orozco saw a long-haired man (not appellant) leave and come back.

Video from Moun's home showed that one of Estrada's pursuers, who had shoulder-length hair, ran back into Moun's home, then ran back in the direction Estrada had fled. Although both of the long-haired man's hands were free when he entered the home, he exited it running with one hand tucked into his clothing.

Orozco further testified that after the long-haired man returned, Orozco heard a gunshot, followed by Estrada's screaming. Seeing a gun pointed at himself, Orozco turned away and felt a shot in his back. He then turned back toward the shooter and attempted to run away, but passed out after feeling a shot in his mouth. About two months after the shooting, an investigating officer showed Orozco a photographic "six pack" that included appellant's photo (admitted into evidence); Orozco wrote that appellant resembled the shooter. At trial, he identified appellant as the shooter.

Ruany Preciado testified that he observed the shooting and the preceding confrontation from the second floor of his neighboring apartment building. He, too, identified appellant as the shooter, adding that appellant received the gun from a long-haired man. He initially testified that appellant was wearing a striped orange shirt, but after the prosecutor played a video of the confrontation, identified appellant as a man in the video wearing a dark shirt.[2] He confirmed that at the preliminary hearing, he had testified appellant was wearing a blue shirt.

Estrada's brother Juan testified that he heard gunshots from his nearby apartment on the day of the shooting, then saw a man in a blue shirt running by, tucking one hand under his shirt as if concealing something. It was the same blue-shirted man who could be seen in the video from Moun's home, chasing Estrada. Soon after the man ran by, Juan found Estrada bleeding from his chest, struggling to breathe.[3]

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[2] Little of the confrontation was visible in the video, due to limitations imposed by angles, obstructions, distance, and video quality. An investigating officer testified that he had been able to view the video with more clarity prior to trial, and had seen a dark-shirted man raise his arm immediately before Estrada fell to the ground. The officer testified that he believed the same movement was visible on the video as played at trial.

[3] Estrada did not testify. Records of his treatment on the day of the shooting for a gunshot wound to the chest were admitted into evidence.

Video from Moun's home showed that Estrada's pursuers returned there and recovered the bicycles Estrada had discarded near it. When he returned, the blue-shirted man was tucking one hand into his shirt.

2. *Alleged Accomplice Testimony*

Savon Moun testified that on the day of the shooting, he was at his home on Gaviota Avenue with some neighbors and appellant. He saw a man stealing his bicycle (along with a bicycle owned by one of his companions), and gave chase. He and his companions caught up to the thief and engaged in a yelling match that escalated into a fistfight. He admitted hearing gunshots, but denied shooting anyone. He claimed never to have seen the gun, let alone who brought or fired it. He denied knowing appellant to be the shooter.

Moun confirmed that he had been charged with the victims' attempted murder and had pleaded no contest to felony assault. He claimed not to recall his testimony from his plea hearing, at which he identified appellant as the shooter. He further claimed not to recall identifying Brian Vasquez as the person who brought the gun. He denied knowing Vasquez at all.

In the presence of the jury, the court read a lengthy excerpt from the transcript of Moun's plea hearing, including Moun's testimony that appellant shot the victims after Vasquez, whom Moun identified by name, gave appellant a gun. When the court asked if he remembered the quoted testimony, Moun responded that he had not understood

much of what he was saying during the plea hearing, instead "just going by [his] lawyer."

An investigating officer testified that Moun had identified Vasquez from a photograph shown to him during an interview on the day of the shooting. The officer identified a photograph of Vasquez taken on the day of the shooting (admitted into evidence), in which Vasquez's hair and clothing appeared to match those of the long-haired man seen in the video from Moun's home. The officer further testified that Moun had been evasive on several topics.

B. *Defense Case*

Appellant denied being at Moun's home on the day of the shooting, and claimed not to recall where he had been. He further testified that although he and Moun had been "good budd[ies]" at the time of the shooting, his friendship with Moun was over because Moun had lied about him in court. He denied shooting Estrada and Orozco. He claimed he had never seen Orozco before Orozco testified.

On cross-examination, appellant testified that he worked as an independent contractor for horticulture companies. He denied knowing the meaning of the phrase "Mills Pays the Bills." The prosecutor re-called, as a rebuttal witness, an investigating officer, who testified that millspaysthebills.com is a website for a company selling a product used to grow plants. In the video from Moun's home, the word "Mills" was visible on the back of the blue-shirted man's shirt.

C. *Closing Arguments*

Reviewing the video evidence, the prosecutor argued appellant could be seen chasing Estrada, standing in front of Estrada with his shoulders squared and one arm raised immediately before Estrada was shot, and tucking one arm into his clothing after the shooting. She reminded the jury that both Orozco and Preciado had identified appellant as the shooter at trial, and that Orozco had also identified him earlier in the photographic six pack. She further reminded the jury that Moun, too, had identified appellant as the shooter at his plea hearing. She argued Moun had refused to identify appellant as the shooter at trial due to his friendship with appellant, but that "when it was his butt on the line, he was ready to tell the truth." She argued Moun had lied on the stand when he denied knowing Vasquez, and had been evasive during police interrogation with respect to information he thought might get him in trouble.

Appellant's counsel argued appellant had no motive to attempt to kill Estrada and Orozco, commenting, "Who would have a motive to shoot somebody for stealing bikes from their friend's house? It doesn't make sense." He disputed the prosecutor's interpretation of the video evidence. Urging the jury to review the instruction on the believability of witnesses (CALJIC No. 2.20), he challenged the reliability of Orozco's and Preciado's identifications of appellant as the shooter. He urged the jury to "consider the source" when evaluating Moun's testimony, arguing Moun had lied at his plea hearing to get himself out of trouble. He

argued Moun had also lied when he denied knowing Vasquez, proving Moun "[c]ompletely unbelievable on the stand . . . ."

In rebuttal, the prosecutor informed the jury (as the trial court would later inform it, per CALJIC No. 2.21.2) that a witness "who was willfully false in one material part of his or her testimony is to be distrusted in others." She again argued that Orozco and Preciado were reliable when they identified appellant as the shooter.

D. *Jury Instructions and Requests for Readings of Testimony*

The court instructed the jury on the believability of witnesses (CALJIC No. 2.20) and further instructed it, per CALJIC No. 2.21.2, to distrust the testimony of a witness who provided willfully false testimony. The court did not instruct the jury on the heat of passion theory of attempted voluntary manslaughter. Nor did it instruct the jury on testimony from a defendant's accomplice. Neither party requested such instructions.[4]

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[4] At the conclusion of the prosecution's case, the trial court indicated it might instruct the jury on the heat of passion theory of attempted voluntary manslaughter, but that its decision on the issue would depend on appellant's testimony. After appellant testified, the court explained that it would not instruct on attempted voluntary manslaughter due to a lack of evidence that appellant had committed that offense, noting that appellant had denied committing any offense. Appellant's counsel did not object.

During its deliberations, the jury submitted notes requesting (1) clarification regarding when Preciado first identified appellant; (2) a readback of Orozco's testimony describing the shooting; (3) a readback of Moun's plea hearing testimony; and (4) a readback of Preciado's testimony concerning "the incident." Testimony was read back to the jury in response to each note.

DISCUSSION

Appellant contends (1) the trial court prejudicially erred by failing to instruct the jury, sua sponte, on the heat of passion theory of attempted voluntary manslaughter; (2) the trial court prejudicially erred by failing to deliver, sua sponte, the standard cautionary instructions concerning testimony from a defendant's accomplice; (3) the trial court erred by failing to stay, under Penal Code section 654, appellant's sentences for possession of the firearm used in the attempted murders and the ammunition loaded therein; and (4) the trial court's sentencing minute order and the abstract of judgment must be corrected to conform to the court's oral pronouncement of consecutive life terms on the attempted murder counts, which allowed for the possibility of parole.

A. *Omission of Heat of Passion Instruction*

Appellant contends the trial court prejudicially erred by failing to instruct the jury, sua sponte, on the heat of passion theory of attempted voluntary manslaughter

because there was substantial evidence to support the theory, viz., the evidence that appellant shot the victims during a fight that arose from Estrada's "provocative act of trying to steal the bicycles from the Moun residence . . . ."

1. *Governing Principles*

"A heat of passion theory of manslaughter has both an objective and a subjective component." (*People v. Moye* (2009) 47 Cal.4th 537, 541, 549 (*Moye*); see also *People v. Millbrook* (2014) 222 Cal.App.4th 1122, 1139 [heat of passion theory of attempted voluntary manslaughter has same components].) To satisfy the objective component, the defendant must have reacted to provocation "'that would cause an emotion so intense that an ordinary person would simply *react*, without reflection . . . .'" (*People v. Rangel* (2016) 62 Cal.4th 1192, 1225, quoting *People v. Beltran* (2013) 56 Cal.4th 935, 949.) To satisfy the subjective component, the defendant must have experienced emotion "'so strong that the defendant's reaction bypassed his thought process to such an extent that judgment could not and did not intervene.'" (*People v. Rangel*, *supra*, at p. 1225, quoting *People v. Beltran*, *supra*, at p. 949.)

Where the defendant claims to have been provoked by the victim's participation in mutual combat, the heat of passion theory fails if the defendant took undue advantage in the fight. (See *People v. Lee* (1999) 20 Cal.4th 47, 60, fn. 6 (*Lee*); accord, *People v. Whitfield* (1968) 259 Cal.App.2d 605, 609 (*Whitfield*) [reduction based on mutual combat requires

that "the contest was waged on equal terms, and no undue advantage was taken by defendant"].)

We review de novo whether a trial court erred by failing to instruct on a heat of passion theory of attempted voluntary manslaughter. (See *People v. Souza* (2012) 54 Cal.4th 90, 113.) We will find such error if the theory was supported by substantial evidence, meaning evidence strong enough to persuade a reasonable jury. (See *id.* at p. 116.) We review such error for prejudice under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*). (See *Moye*, *supra*, 47 Cal.4th at p. 541.)[5] This standard requires reversal if the record shows a reasonable probability that appellant would have obtained a more favorable result absent the error. (See *Moye, supra,* at p. 541.)

2. *Analysis*

The trial court properly declined to instruct the jury on the heat of passion theory of attempted voluntary manslaughter because no substantial evidence supported either of the theory's two components. First, there was no

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[5] Our Supreme Court has declined to resolve whether erroneous omission of a heat of passion instruction may constitute a federal constitutional infirmity in the instructions on the malice element of murder, which would require review for prejudice under the standard set forth in *Chapman v. California* (1967) 386 U.S. 18, 24. (See *People v. Franklin* (2018) 21 Cal.App.5th 881, 890-891.) Appellant presents no argument on this issue, and we do not reach it.

evidence on which the jury reasonably could have relied to find in appellant's favor on the objective component. An unsuccessful attempt to steal two bicycles would not send a reasonable person into a fit of emotion so intense as to preclude reflection. Nor would a reasonable person react in that manner simply because the unsuccessful thief (joined by an ally responding to his plea for help) fought back when attacked by a group of men seeking to punish him. (Cf. *People v. Gutierrez* (2003) 112 Cal.App.4th 704, 707, 709 (*Gutierrez*) [finding "no evidence in the record remotely suggesting any objectively reasonable provocation," despite evidence that victim helped bar owner forcibly remove defendant and his companions from bar].) Moreover, appellant took undue advantage over his unarmed victims by using a gun, precluding his reliance on the victims' mere participation in the fistfight. (See *Lee*, *supra*, 20 Cal.4th at p. 60, fn. 6 [observing, in dicta, that defendant's use of gun in shoving match was undue advantage precluding reliance on heat of passion arising from mutual combat]; cf. *Whitfield*, *supra*, 259 Cal.App.2d at pp. 609-610 [mutual combat could not reduce conviction from murder to voluntary manslaughter, where defendants initiated fight and took undue advantage by outnumbering victim and using knives].)

Second, no substantial evidence supported a finding in appellant's favor on the heat of passion theory's subjective component. Appellant made no mention in his testimony of any emotion he experienced at the time he shot the victims;

on the contrary, he denied being present during the theft attempt and ensuing fight. No other, circumstantial evidence of appellant's mental state enabled the jury to reasonably find appellant experienced emotion to a degree precluding judgment. (See *People v. Sinclair* (1998) 64 Cal.App.4th 1012, 1016-1022 [no substantial evidence required trial court to instruct on heat of passion, where defendant testified he was hit in face with bottle, surrounded by six people, shown gun, and threatened with death, but denied shooting victim]; *Gutierrez*, *supra*, 112 Cal.App.4th at pp. 707, 709 [same, where victim helped bar owner forcibly remove defendant and companions from bar, but defendant did not testify and defense counsel argued defendant was not the shooter].)

The cases on which appellant relies are distinguishable. In *Lee*, *supra*, 20 Cal.4th at p. 61, our Supreme Court declined to consider whether sufficient evidence supported the trial court's decision to instruct the jury on heat of passion. As noted, its dicta on this point was unfavorable to appellant. (See *id.* at p. 60, fn. 6.) Although the Court found error in the omission of a requested pinpoint instruction on provocation in *People v. Wharton* (1991) 53 Cal.3d 522, 571-572, the defendant there killed his victim after weeks of provocation, during which he made statements to psychotherapists indicating he was losing control. Here, there was no remotely comparable evidence of provocation or of its effect on appellant's mental state.

B. *Omission of Accomplice Instructions*

Appellant contends the trial court prejudicially erred by failing to deliver the standard cautionary instructions concerning testimony from a defendant's accomplice. He argues the court had a sua sponte duty to deliver the instructions, in light of Moun's admission that he, like appellant, had been charged with the victims' attempted murders.

1. *Governing Principles*

An accomplice is "one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (Pen. Code, § 1111; see also *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1133 ["testimony" within meaning of Penal Code section 1111 "may refer to extrajudicial statements as well as in-court testimony"].) "'If there is evidence from which the jury could find that a witness is an accomplice to the crime charged, the court must instruct the jury on accomplice testimony.'" (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 302 (*Gonzales*), quoting *People v. Horton* (1995) 11 Cal.4th 1068, 1114.) Two cautionary instructions are required: "'The jury is instructed to view with caution testimony of an accomplice that tends to incriminate the defendant. It is also told that it cannot convict a defendant on the testimony of an accomplice alone.'" (*People v. Williams* (2010) 49 Cal.4th 405, 455 (*Williams*), quoting *People v. Howard* (2008) 42 Cal.4th 1000,

1021-1022.) Caution is warranted due to an accomplice's "natural incentive to minimize his own guilt before the jury and to enlarge that of his cohorts . . . ." (*People v. Brown* (2003) 31 Cal.4th 518, 555.)

We review claims of error concerning accomplice instructions de novo. (See *People v. Guiuan* (1998) 18 Cal.4th 558, 569 (*Guiuan*).) "'A trial court's failure to instruct on accomplice liability . . . is harmless if there is sufficient corroborating evidence in the record.' [Citation.]" (*Gonzales*, *supra*, 52 Cal.4th at p. 303.) "'Corroborating evidence may be slight, may be entirely circumstantial, and need not be sufficient to establish every element of the charged offense.' [Citation.]" (*Ibid.*) In the absence of sufficient corroboration, the erroneous omission of accomplice instructions is reviewed for prejudice under the *Watson* standard. (*Id.* at p. 304.)

2. *Analysis*

We decline to decide whether the trial court erred by failing to deliver the standard accomplice instructions.[6] The

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[6] Respondent concedes the jury could have found Moun to be an accomplice, but argues the trial court nevertheless had no duty to deliver the standard accomplice instructions because Moun's trial testimony was favorable to appellant. We express no opinion on either point, but note our Supreme Court's express disapproval of case law imposing a burden on trial courts to "parse the testimony of an accomplice to determine whether it may be construed as 'favorable' or 'unfavorable' to the defendant." (*Guiuan*, *supra*, 18 Cal.4th at p. 569.)

instructions' omission was harmless because sufficient evidence corroborated Moun's identification of appellant as the shooter. Two eyewitnesses -- Orozco (a victim) and Preciado -- identified appellant as the shooter at trial. The reliability of Orozco's identification was bolstered by the fact that only two months after the shooting, when shown appellant's photograph in a six pack, he wrote that appellant resembled the shooter. This evidence provided sufficient corroboration of Moun's identification to render the omission of accomplice instructions harmless.[7] (See *People v. Penunuri* (2018) 5 Cal.5th 126, 133, 153-155 [omission of accomplice instructions was harmless, where accomplice's identification of defendant at scene of murders was corroborated by another witness's identification of defendant there].)

Additionally, the instructions' omission was harmless because there is no reasonable probability that their delivery would have yielded a result more favorable to appellant. Even without accomplice instructions, the jury was on notice of the need to view Moun's testimony with caution. Both

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[7] It is immaterial whether, as appellant argues, the corroborating identifications "were not without qualifications," or if the jury deemed them, standing alone, "not sufficient to conclude that appellant was the shooter . . . ." Corroborating evidence need not be sufficient on its own to prove the charges; on the contrary, it may be slight. (*Gonzales*, *supra*, 52 Cal.4th at p. 303.) The identification evidence from Orozco and Preciado was more than slight.

parties' counsel reminded the jury that Moun was a former codefendant with a motive to shift the blame for the shooting. Specifically, the prosecutor argued Moun had been evasive during police interrogation with respect to information he thought might get him in trouble, and reminded the jury "his butt [was] on the line" at the plea hearing. Similarly, appellant's counsel argued Moun had lied at his plea hearing to get himself out of trouble. (See *Williams*, *supra*, 49 Cal.4th at p. 456 [omission of accomplice instructions was harmless, in part because jury, knowing accomplice had been arrested in connection with same crime charged against defendant and had testified under grant of immunity, would have been inclined to view accomplice's testimony with caution even without instructions].) Moreover, both parties' counsel argued Moun had lied on the stand when he denied knowing Vasquez. Because it received instructions on the believability of witnesses (CALJIC No. 2.20) and on the need to distrust any witness who lied (CALJIC No. 2.21.2), the jury would have understood that Moun, having lied about Vasquez, had limited credibility. (See *Gonzales*, *supra*, 52 Cal.4th at p. 304 [omission of accomplice instructions was harmless, where accomplice's testimony contradicted prior statements to investigator and trial court instructed jury with CALJIC Nos. 2.20 and 2.21.2].)

C. *Failure to Stay Sentences for Possession of Firearm and Ammunition*

The parties agree that because appellant's use of a firearm and the ammunition loaded therein to attempt to murder Estrada and Orozco (charged in counts one and two) was indivisible from his unlawful possession of the same firearm and ammunition (charged in counts three and four), the trial court erred by failing to stay appellant's sentences on counts three and four. We agree. Penal Code section 654 requires a court to stay a defendant's sentence on a conviction for unlawful possession of a firearm where the defendant possesses the firearm "'only in conjunction with'" an offense in which he uses it. (*People v. Wynn* (2010) 184 Cal.App.4th 1210, 1217, quoting *People v. Bradford* (1976) 17 Cal.3d 8, 22.) Here, the evidence showed that appellant acquired the gun from Vasquez during the confrontation with the victims, immediately before using it to shoot them; no evidence showed he possessed the gun at a different time or for a different purpose. (See *People v.Wynn*, *supra*, at p. 1217 ["courts have determined that section 654 applies where the defendant obtained the prohibited weapon *during* the assault in which he used the weapon"]; accord, *People v. Bradford*, *supra*, at pp. 13, 22; *People v. Venegas* (1970) 10 Cal.App.3d 814, 821.) Further, appellant's firing of ammunition from the same gun, in the same shooting, was the only evidence that he ever possessed ammunition. (See *People v. Sok* (2010) 181 Cal.App.4th 88, 100 [trial court erred in failing to stay sentences for possession of

ammunition, where ammunition was loaded into same firearm underlying defendant's separate unlawful possession conviction].) Accordingly, as the parties request, we order the trial court to stay appellant's sentences on counts three and four.

D. *Inaccurate Recording of Trial Court's Oral Sentencing Judgment*

The parties agree, and the record confirms, that the sentencing minute order and the abstract of judgment inaccurately recorded the trial court's oral pronouncement of sentence by eliminating any possibility of parole from appellant's consecutive life terms on counts one and two. "If the minute order or abstract of judgment is different from the oral pronouncement of judgment, the oral pronouncement controls." (*People v. Mullins* (2018) 19 Cal.App.5th 594, 612; accord, *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [minute order]; *People v. Mitchell* (2001) 26 Cal.4th 181, 185 [abstract of judgment].) Thus, as the parties request, we order the trial court to correct the sentencing minute order and the abstract of judgment to reflect a life term on count one and a consecutive life term on count two, rather than life terms without the possibility of parole.

DISPOSITION

We affirm the judgment, as modified by the following instructions, and remand to the trial court with instructions to (1) stay appellant's sentences on counts three and four under Penal Code section 654; (2) correct the sentencing minute order and the abstract of judgment to reflect a life term on count one and a consecutive life term on count two, rather than life terms without the possibility of parole; and (3) forward a certified copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, P. J.

We concur:

COLLINS, J.

CURREY, J.