Filed 5/25/10

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RICHARD MARIO RAMIREZ, Defendant and Appellant.	B213097 (Los Angeles County Super. Ct. No. YA061038)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Brandlin, Judge. Affirmed in part; reversed in part with directions.

William L. Heyman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Robert S. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110, this opinion is certified for publication with the exception of part III (A)-(B).

I. INTRODUCTION

Defendant, Richard Mario Ramirez, appeals after a jury convicted him of shooting at an occupied automobile (Pen. Code,[1] § 246) and found he personally discharged a firearm from an automobile, thereby killing the victim. (§§ 12022.53, subds. (b), (c), 12022.55.) The jury found as follows: defendant was guilty of discharging a firearm in violation of section 246; defendant discharged a firearm in violation of section 12022.53, subdivision (b) and (c); and defendant discharged a firearm from an automobile which caused the death of Mr. Rubinos within the meaning of section 12022.55. After a record correction motion was granted, defendant was sentenced to the following sentence: 5 years for discharging the firearm into the car; 25 years to life pursuant to section 12022.53, subdivision (d); plus 6 years pursuant to section 12022.55. The section 12022.53, subdivisions (b) and (c) enhancements were stricken but not the jury findings in that regard. Defendant argues the evidence was insufficient to support the section 246 conviction and the trial court could not impose the indeterminate section 12022.53, subdivision (d) term.

In the published portion of the opinion, we address defendant's contention the section 12022.55 enhancement must be reversed. Defendant argues that since the uncontradicted evidence demonstrates the victim was inside a car at the time of the shooting, the section 12022.55 enhancement must be reversed. Given the statutory language, we agree with defendant. Thus, the section 12022.55 enhancement must be reversed.

II. FACTUAL BACKGROUND

We view the evidence in a light most favorable to the judgment. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *People v. Elliot* (2005) 37 Cal.4th 453, 466; *Taylor v.*

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

Stainer (9th Cir. 1994) 31 F.3d 907, 908-909.) At approximately 1:30 p.m. on February 23, 2005, Hans Anderson Revolledo and Miguel Rubinos were in Carla Rivera's car. Mr. Revolledo and Ms. Rivera were being driven by Mr. Rubinos to a 7-Eleven store near 135th and Lemoli Avenue to purchase marijuana. Mr. Rubinos parked the car on the street near the 7-Eleven store and got out to buy the marijuana. Mr. Revolledo and Mr. Rubinos had purchased marijuana at the same place the previous day.

Mr. Revolledo remained in the car for a while speaking on a cellular phone. Mr. Revolledo saw Mr. Rubinos meet a thin man with shoulder length curly hair who was about five feet, six inches tall. The man wore white pants and a hooded sweatshirt. The man had large teeth when he smiled. At trial, Mr. Revolledo identified the co-defendant, Sean Johnson, who is not a party to this appeal, as looking like that individual. Mr. Rubinos and Mr. Johnson walked away from the 7-Eleven store. Mr. Revolledo followed them. Ms. Rivera started her car, drove in their direction, and parked on Lemoli Street. Mr. Rubinos and Mr. Johnson crossed the street and entered a laundry room. Mr. Revolledo followed them inside. Ms. Rivera also walked into the laundry room. Defendant, who was waiting inside, pulled out a chrome revolver as did Mr. Johnson. The men told Mr. Rubinos, Ms. Rivera and Mr. Revolledo, "Get on the floor and take out everything that you have." Mr. Rubinos and Mr. Revolledo complied. Mr. Revolledo removed his lighter, gum, cellular phone, and money from his pocket but not his wallet.

Thereafter, Mr. Johnson tapped Mr. Revolledo and said, "You're the first one to leave." Mr. Revolledo ran outside without his belongings. Mr. Rubinos and Ms. Rivera came out shortly thereafter. Mr. Rubinos began yelling toward the laundry room, "I'm going to call the police." Defendant pointed his gun at them and said: "Get out. Leave." Thereafter, Mr. Revolledo saw defendant get into the right front passenger seat of a car and Mr. Johnson got into the rear seat. The car then drove away. Mr. Rubinos got into the driver's seat of Ms. Rivera's car. Ms. Rivera sat in the front passenger seat. Mr. Revolledo got into the rear seat.

Nacole Winbush had also gone to the area of the 7-Eleven store at 135th and Lemoli Streets on February 23, 2005 to purchase marijuana. Ms. Winbush had

previously bought marijuana there by driving up and purchasing it on approximately 15 occasions from defendant. Ms. Winbush had seen Mr. Johnson on at least five prior occasions at that location. On February 23, 2005, Ms. Winbush asked defendant if he had some pot. Mr. Johnson was standing nearby. Defendant responded affirmatively on the condition that she give them a ride. Ms. Winbush agreed. Mr. Johnson got into the backseat. Defendant got into the front passenger seat. Mr. Rubinos, who was upset and cursing, followed Ms. Winbush's car. While the chase ensued, Mr. Revolledo wrote down the license plate number of the car they followed, 4JJE691. Ms. Winbush later acknowledged that that was her license plate number.

Ms. Winbush drove down 135th Street. Mr. Johnson, said: "Oh, shit, they're following. They're behind us." Ms. Winbush saw a car in her rearview mirror. The car was following close to Ms. Winbush's rear bumper. Defendant directed Ms. Winbush to drive and turn on Crenshaw Boulevard. Ms. Winbush drove fast, turning right on Crenshaw Boulevard. The other car continued to follow Ms. Winbush. Defendant directed Ms. Winbush to turn right on 147th Street. As she did so, Mr. Rubinos followed. Thereafter, Mr. Rubinos drove alongside the left side of Ms. Winbush's car and rammed her automobile. Both cars stopped. Defendant told Ms. Winbush, "Get down." Ms. Winbush heard "pop, pop" shots from inside her car, very close to her. Mr. Revolledo saw defendant move Ms. Winbush. Mr. Revolledo saw defendant fire the handgun. Mr. Revolledo saw defendant take the driver's seat of Ms. Winbush's car, which had jumped the curb. Thereafter, Ms. Winbush's car made a U-turn and drove away. Mr. Revolledo saw that Mr. Rubinos was bleeding from his head and Ms. Ramirez had injuries to the side of her face. Mr. Revolledo summoned help from a woman nearby, who called the police. Mr. Rubinos was taken to a hospital by the paramedics where he died as a result of a gunshot wound to his head.

Defendant told Ms. Winbush to put the car in reverse and get out of there. As they drove away, Ms. Winbush asked defendant if he had done anything. Defendant said the window was shot out. Defendant said, "I had to try to get them before they tried to get me." Ms. Winbush was frightened. Ms. Winbush asked defendant and Mr. Johnson to

get out of her car. Ms. Winbush was stopped by police three days later while driving her car. Thereafter, Ms. Winbush gave police permission to search her home. The search uncovered marijuana. Ms. Winbush was granted immunity from prosecution in exchange for her testimony in this case. Ms. Winbush's car was impounded by the police. Fingerprints found both inside and outside of Ms. Winbush's car were later matched to defendant.

III. DISCUSSION

[Parts III (A)-(B) are deleted from publication.
See *post* at page 12 where publication is to resume.]

A. Sufficiency Of The Evidence—Section 246

Defendant argues there was insufficient evidence to support his conviction for shooting at an occupied automobile in violation of section 246. Defendant further argues that he was acting in self-defense and the verdict denied his constitutional right to due process. In reviewing a challenge of the sufficiency of the evidence, we apply the following standard of review: "[We] consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432; *People v. Hayes* (1990) 52 Cal.3d 577, 631; *People v. Johnson* (1980) 26 Cal.3d 557, 576.) Our sole function is to determine if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Marshall* (1997) 15 Cal.4th 1, 34; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Barnes* (1986) 42 Cal.3d 284, 303; *Taylor v. Stainer, supra*, 31 F.3d at pp. 908-909.) The standard of review is the same in cases where the prosecution relies primarily on

circumstantial evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11; *People v. Stanley* (1995) 10 Cal.4th 764, 792; *People v. Bloom* (1989) 48 Cal.3d 1194, 1208; *People v. Bean* (1988) 46 Cal.3d 919, 932.) The California Supreme Court has held, "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin, supra,* 18 Cal.4th at p. 331, quoting *People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Defendant concedes that the jurors were instructed concerning self-defense with CALCRIM No. 965.[2] The jurors were further instructed with CALCRIM No. 3470 which discusses self-defense. However, defendant reasons as follows. Mr. Rubinos, Mr. Revolledo and Ms. Rivera knew that defendant was armed with a handgun. Thus, it was reasonable for him to assume that they were heavily armed and intended to shoot him because they pursued him in a car. Defendant adds that it is not unreasonable that individuals attempting to commit such crimes as the purchase of marijuana may carry weapons. Defendant further argues that it was also reasonable for him to conclude his life was in danger after Ms. Winbush's car was rammed. We disagree and conclude substantial evidence supports the verdict.

Both defendant and Mr. Johnson were armed with handguns during their "interactions" with Mr. Rubinos, Mr. Revolledo and Ms. Rivera in the laundry room and outside. Mr. Revolledo testified defendant and Mr. Johnson robbed them in the laundry room by forcing them to lay on the floor and remove their possessions from their pockets. At no time did defendant or Ms. Winbush indicate that they saw anyone in Ms. Rivera's

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[2] CALCRIM No. 965 was given as follows: "Defendant Richard Mario Ramirez is charged in count 6 with shooting at an occupied motor vehicle. To prove the defendant is guilty of this crime, the People must prove that one, the defendant willfully and maliciously shot a firearm; and two, the defendant shot the firearm at an occupied motor vehicle; and three, the defendant did not act in self-defense. [¶] Someone commits an act willfully when he or she does it willingly or on purpose. Someone acts maliciously when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else. [¶] A motor vehicle includes a passenger vehicle or automobile. [¶] A firearm is any device designed to be used as a weapon from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion."

car with a gun. No doubt, Mr. Rubinos was angry and chased the car in which defendant, Mr. Johnson and Ms. Winbush were riding. The jury could reasonably conclude that neither Mr. Rubinos nor anyone in Ms. Rivera's car was armed. Moreover, the jury could also reasonably find that Mr. Rubinos was *not* armed as he used the car to get his revenge.

Defendant's attorney, Ernestine Odom, repeatedly questioned Mr. Revolledo's credibility during her closing argument. Ms. Odom argued that Mr. Rubinos had marijuana in his system at the time he pursued and collided with Ms. Winbush's car. However, defendant did not know that at the time. The coroner's investigation revealed that fact. Moreover, the presence of marijuana could also have been the cause of Mr. Rubinos' irrational behavior. Ms. Odom emphasized how fearful Ms. Winbush was during the pursuit. Ms. Odom also repeated defendant's statement to Ms. Winbush, "I had to get them before they got me." Ms. Odom then argued that was a very reasonable response to the chase and collision. The jury's verdict impliedly found defendant's shooting was neither a reasonable response to the situation nor that he acted in self-defense. There was substantial evidence to support defendant's conviction for willfully and maliciously shooting a firearm at an occupied automobile.

B. The section 12022.53, subdivision (d) enhancement

1. Factual and procedural background

Defendant argues that the trial court improperly imposed a section 12022.53, subdivision (d) enhancement as to count 6. Although the third amended information charged him with such an allegation, the jury did not make a true finding as to that enhancement. The third amended information alleges: "It is further alleged as to count(s) 1, 2, 3, 4, 5, 6, [defendant] personally and intentionally discharged a firearm, a handgun, which proximately caused great bodily injury and death to CARLA RIVERA, MIGUEL RUBINOS within the meaning of Penal Code section 12022.53(d)." The third

amended information also alleges section 12022.53, subdivision (b) and (c) enhancements. Finally, the third amended information alleges: "It is further alleged that the defendant [], with the intent to do so, inflicted great bodily injury and death on MIGUEL RUBINOS as a result of discharging a firearm from a motor vehicle in violation of Penal Code section 12022.55." As set forth in footnote 3 above, the jury was instructed with CALCRIM No. 965 describing the elements of shooting at an occupied automobile. CALCRIM No. 965 includes the willful and malicious shooting of a firearm at an occupied automobile. The jury was also instructed with CALCRIM No. 3150[3] regarding the personal use and intentional discharge of a firearm causing injury or death. Finally, the prosecutor stated in his opening argument that the jurors would be called upon to determine whether defendant personally and intentionally used and discharged a firearm resulting in the death of Mr. Rubinos. The guilty verdict form on count 6 included only the section 12022.53, subdivision (b) and (c) and the section 10222.55 allegations, to which the jurors made true findings. The trial court declared a mistrial on the remaining counts as a result of the jury's deadlock.

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[3] CALCRIM No. 3150 was given as follows: "If you find defendant [] guilty of the crimes charged, you must then decide whether, for each crime, the People have proved the additional allegations that the defendant personally and intentionally discharged a firearm during those crimes and, if so, whether the defendant's act caused death. You must decide whether the People have proved these allegations for each crime and return a separate finding for each crime. [¶] To prove that the defendant intentionally discharged a firearm, the People must proved that: [¶] 1. The defendant personally discharged a firearm during the commission or attempted commission of that crime. [¶] AND [¶] 2. The defendant intended to discharge the firearm. [¶] If the People have proved both 1 and 2, you must then decide whether the People also have proved that the defendant's act caused the death. [¶] A firearm is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion. [¶] An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence. [¶] The People have the burden of proving each of these allegations beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved."

After the guilty verdict on count 6 was received, the prosecutor, Warren Kato, stated he intended to retry the remaining counts. On June 12, 2008, the parties indicated that the third amended information would be further amended to add a voluntary manslaughter charge as count 7 along with section 186.22, subdivision (b)(1)(B) and 12022.5, subdivision (a) enhancements. Defendant entered a nolo contendere plea to count 7 and admitted the special allegations were true. Before defendant was sentenced, the parties discovered that the count 6 verdict form did not include a true finding for the section 12022.53, subdivision (d) enhancement. The prosecution's motion to set aside and vacate defendant's plea as to count 7 based on that error was granted.

Mr. Kato then filed a "motion to correct the record," arguing that although the verdict form did not include the section 12022.53, subdivision (d) finding as to count 6, the jurors implicitly found that allegation to be true based upon the instructions given and their true findings as to sections 12022.53, subdivision (c) and 12022.55. The trial court initially denied the prosecutor's motion to correct the record. However, relying upon *People v. Marshall* (1996) 13 Cal.4th 799, 852, and *People v. Cory* (1984) 157 Cal.App.3d 1094, 1102-1103, the trial court reconsidered and granted the motion to correct the record noting, "In our case, factually, as relates to count 6 and the enhancements, the jurors have already determined through their findings regarding other enhancements all of the necessary factual findings as to a 12022.53(d), but due to inadvertence, they weren't actually provided that enhancement." The trial court further stated, "[I]t's pretty clear to me from reading the cases that it's the fact-finding process of the jury that's controlling, rather than the form of the verdict form."

2. The trial court could properly impose the section 12022.53, subdivision (d) enhancement

As we recently held in *People v. Camacho* (2009) 171 Cal.App.4th 1269, 1272-1273: "'"'A verdict is to be given a reasonable intendment and to be construed in light of the issues submitted to the jury and the instructions of the court.' [Citations.]"

[Citations.] "The form of a verdict is immaterial provided the intention to convict of the crime charged is unmistakably expressed. [Citation.]" [Citation.]' (*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 right suffered no prejudice. (§§ 1258, 1404[].)' (*People v. Webster* (1991) 54 Cal.3d 411, 447; see also Cal. Const., art. VI, § 13.) '"There are innumerable authorities which declare that the form of the verdict is immaterial if the intention to convict of the crime charged is unmistakably expressed. [Citations.]" [Citations.] [¶] In *People v. Reddick* [(1959) 176 Cal.App.2d 806], the court stated: "No particular form of verdict is required, so long as it clearly indicates the intention of the jury to find the defendant guilty of the offense with which he is charged. It is sufficient if it finds him guilty by reference to a specific count contained in the information. [Citations.]" (*Id*. at p. 821].)' (*People v. Bratis* (1977) 73 Cal.App.3d 751, 763-764; accord, *People v. Escarcega* (1969) 273 Cal.App.2d 853, 858 ['in giving effect to the manifest intention of the jury, the clerical error will be disregarded.'].) Where the error is in the recording of the judgment, as opposed to in the rendering of the judgment, it is clerical error which may be disregarded or corrected. (See *People v. Trotter* (1992) 7 Cal.App.4th 363, 370.)" (Footnote omitted.)

In *People v. Cory, supra,* 157 Cal.App.3d at pages 1102-1103: the information alleged the defendant had used a firearm within the meaning of both sections 1203.06 and 12022.5; the jury was instructed on the firearm use issue; but the jury returned an affirmative finding only as to the section 1203.06 allegation. Our colleagues in Division Seven of this appellate district held the jury's finding closely paralleled the form prescribed by Penal Code section 1158a, subdivision (b) which requires a specific finding that the defendant used a firearm. (*Id.* at p. 1102.) Our Division Seven colleagues reasoned: "Here, as generally, the jury's function was to find whether the *facts* necessary for conviction had been proven, by assessment of the evidence admitted at trial in light of the court's instructions defining the types and quanta of facts necessary for conviction. The verdict, culminating this process, was the jury's statement whether it had or had not

found those facts. There was no need in this *fact-finding* process for enumeration in the verdict of the statutes that defined the facts to be found or prescribe their legal effects." (*Ibid.*) The Court of Appeal found further support in the fact that: "[T]he generally approved jury instruction concerning use of a firearm is designed for use in connection with determinations under both section 1203.06 and 12022.5. . . . Since the *facts* thus to be found under this instruction are the same for each of the two statutes, it logically follows that an affirmative finding rendered by a jury so instructed is sufficient to support the sentencing court's invocation of both section 1203.06 and section 12022.5. For again, the function of the verdict is to register the jury's determination of whether the evidence sufficiently establishes the facts that the instructions recite are necessary to conviction." (*Id.* at p. 1103; see also *People v. Jones, supra,* 58 Cal.App.4th at p. 711; *People v. Escarcega, supra,* 273 Cal.App.2d at p. 858 [clerical error will be disregarded where the verdict form contained the wrong Penal Code reference but the jurors were instructed on the correct offense].)

The same is true in this case. The third amended information correctly alleged the section 12022.53, subdivision (d) enhancement as to count 6. The trial court instructed the jury regarding the necessary findings that defendant personally and intentionally used and discharged a firearm resulting in the death of Mr. Rubinos. An essential element of the section 12022.55 finding is that the accused inflict great bodily injury or death on the victim. In returning the section 12022.55 finding, the jurors found that defendant inflicted great bodily injury upon or killed Mr. Rubinos while committing the violation of section 246. Section 12022.53, subdivision (d) states in part, "Notwithstanding any other provision of law, any person who, in the commission of a felony specified in . . . Section 246, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life." The findings are constitutionally coextensive and the trial court did not err in imposing the section 12022.53, subdivision (d) indeterminate term in light of the sections 246 verdict and the 12022.55 finding.

[The balance of the opinion is to be published]

C. The Section 12022.55 Enhancement Must Be Reversed

Defendant argues the section 12022.55 enhancement must be reversed because Mr. Rubinos was an occupant of an automobile when he was shot to death. Section 12022.55 states in part, "Notwithstanding Section 12022.5, any person, who with the intent to inflict great bodily injury or death, inflicts great bodily injury . . . or causes the death of a person, *other than an occupant of a motor vehicle,* as a result of discharging a firearm from a motor vehicle in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years." (Italics added.) Citing the italicized language in the statute, defendant argues the section 12022.55 five-year enhancement cannot apply when the victim is an occupant of a motor vehicle. We agree.

This is an issue of statutory interpretation. We apply the following standards of statutory review described by our Supreme Court: "When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826; *People v. Jones* (1993) 5 Cal.4th 1142, 1146.) Further, our Supreme Court has noted: "'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) . . . .'" (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) However, the literal meaning of a statute must be in accord with its purpose as our Supreme Court noted in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 658-659 as follows: "We are not prohibited 'from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in

context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the [statute] . . . .'" In *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, our Supreme Court added: "The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in light of the statutory scheme [citation] . . . ." Finally, when a penal statute is susceptible to two different interpretations, that favorable to the accused must be adopted. (*People v. Avery* (2002) 27 Cal.4th 49, 57, ["[W]e have repeatedly stated that when a statute defining a crime or punishment is susceptible of two reasonable interpretations, the appellate court should ordinarily adopt that interpretation more favorable" to the accused]; *In re Tartar* (1959) 52 Cal.2d 250, 257 ["The defendant is entitled to the benefit of every reasonable doubt, whether it arise out of a question of fact, or as to the true interpretation of words or the construction of language used in a statute"].)

Under section 12022.55, defendant cannot be subjected to the additional three possible terms as the victim, Mr. Rubinos, was an occupant of a motor vehicle. Section 12022.55 precludes application of the statute to the fact pattern before us, as the enhancement applies where a defendant, with one of the statutorily enumerated mental states, inflicts great bodily injury or causes death "*other than an occupant of a motor vehicle*" as a result of discharging a firearm from a motor vehicle in the commission of a felony or attempted felony. The Legislature has unambiguously stated that section 12022.55 does not apply in situations where the victim is an occupant of a motor vehicle. Because section 12022.55 is not subject to more than one reasonable interpretation, there is no reason to refer to legislative history to explain the meaning of the enhancement. It is the Legislature's prerogative to address one aspect of a problem in a way that applies a remedy to some but not to others. (*People v. Falsetta* (1999) 21 Cal.4th 903, 918; *People v. Fitch* (1997) 55 Cal.App.4th 172, 184.)

There has been a proliferation of firearm enhancement statutes and section 12022.55 must be viewed as part of that overall scheme of punishing gun use. (See § 12022.5, subd. (a) [personal use of a firearm in a felony requires consecutive term of 3, 4 or 10 years]; § 12022.5, subd. (b) [personal use of an assault weapon or machine gun in the commission of a felony requires consecutive term of 5, 6, or 10 years]; § 12022.5, subd. (d) [the enhancement provided in section 12022.5 expressly applies to personal use of a firearm during a violation of section 245 or murder "if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death"]; § 12022.53, subd. (b) [as to specified felonies, personal use of a firearm requires consecutive term of 10 years]; § 12022.53, subd. (c) [as to specified felonies, personal and intentional discharge of a firearm requires consecutive term of 20 years]; § 12022.53, subd. (d) [as to specified felonies, personal and intentional discharge of a firearm causing great bodily injury or death to a person other than an accomplice requires a consecutive term of 25 years to life]; § 12022.53, subd. (e) [the enhancements in § 12022.53 apply also to a principal in the commission of an offense if it is pled and proved the person violated the criminal street gang statute, § 186.22, subd. (b), and any principal in the offense committed an act specified in § 12022.53, subds. (b)-(d)].) Further, the section 190.2, subdivision (a)(21) special circumstance applies where the "murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle" with the intent to kill. There are a plethora of enhancements and a special circumstance which apply to firearm use and the Legislature is free to rely on studies or anecdotal evidence in concluding the risk of drive-by shootings of persons on the street is far more prevalent than vehicle to vehicle shootings, and accordingly limit the reach of section 12022.55.

The Attorney General argues section 12022.55 should be interpreted to be inapplicable *only where the victim is an occupant of the accused's vehicle*. The Attorney General argues this construction must be applied in order to avoid absurd results. There are two problems with this analysis. First, that is not what section 12022.55 plainly says.

Section 12022.55 makes no reference to the accused's vehicle. Second, for the reasons stated above, the result is not absurd, given the Legislature's other proscriptions against firearm use which more than cover the field of firing a gun and causing: no physical injury; great bodily injury; or death. Thus, the section-12022.5 enhancement is reversed. We obviously do not address the issue of an actor's potential liability when the victim is shot at while in the car and later after leaving the automobile. Here, the evidence demonstrates Mr. Rubinos, the victim, was entirely inside an automobile when he was fatally shot in the head.

IV. DISPOSITION

The section 12022.55 enhancement is reversed and dismissed. The judgment is affirmed in all other respects. The superior court clerk is to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

CERTIFIED FOR PARTIAL PUBLICATION

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.