Filed 12/2/09 opinion on rehearing

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE, Plaintiff and Respondent, v. DAVID LOUIS FULTON, Defendant and Appellant.	C058389 (Super. Ct. No. NCR72573) OPINION ON REHEARING

APPEAL from a judgment of the Superior Court of Tehama County, John J. Garaventa, Judge. Affirmed as modified.

Scott N. Cameron, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette and Michael P. Farrell, Assistant Attorneys General, Charles A. French and Tia M. Coronado, Deputy Attorneys General, for Plaintiff and Respondent.

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of parts I through III and V of the DISCUSSION.

A jury convicted defendant David Louis Fulton of evading an officer with willful or wanton disregard (Veh. Code, § 2800.2, subd. (a); count I) and driving on a suspended license, a misdemeanor (Veh. Code, § 14601.1, subd. (a); count II). In bifurcated proceedings, defendant waived his right to a jury determination and entered a negotiated admission to a prior prison term allegation (Pen. Code, § 667.5, subd. (b)) in exchange for dismissal of the remaining allegations.

After denying defendant's motion to withdraw his admission to the prior prison term allegation, the trial court sentenced defendant to state prison for an aggregate term of four years.

Defendant appeals. With respect to his admission of the prior prison term, defendant filed a request but did not obtain a certificate of probable cause (Pen. Code, § 1237.5 (CPC)). He contends (1) insufficient evidence supports his conviction for evading in that there was no evidence that an illuminated red lamp was visible from the front of the officer's vehicle, (2) the trial court failed to instruct the jury on one of two theories of guilt for evading and it cannot be determined which theory the jury relied upon in reaching its verdict, (3) his conviction for driving on a suspended license must be reversed because the trial court failed to instruct that defendant knew his license was suspended, (4) he did not knowingly and intelligently waive his constitutional rights in admitting the prior prison term allegation, and (5) the record is ambiguous as to the trial court's imposition of fees and fines for driving on a suspended license (count II). In an unpublished portion of

this opinion, we agree that the record is ambiguous with respect to the fees and fines imposed on count II and will remand for clarification. We also reject defendant's remaining contentions and will otherwise affirm the judgment.

We previously concluded that defendant needed a certificate of probable cause to challenge his admission to the prior prison term allegation but granted rehearing, vacated our decision filed February 13, 2009, and allowed briefing on the issue. In the published portion, we now reaffirm our earlier conclusion.

FACTS

About 10:25 a.m. on September 4, 2007, Tehama County Deputy Sheriff Stephen Hoag and Deputy Sheriff Knox were on patrol in Los Molinos when they saw an older model pickup truck with no license plates and two occupants. Each deputy wore a uniform which consisted of a "tan shirt, name plate, badge, green pants . . . . duty belt, sidearm, handcuffs, [and] flashlight." The deputies were in a white patrol vehicle which was marked "Sheriff" on the side and on the back. The patrol vehicle had "a light bar on top" and was "equipped with red forward-facing lights." Deputy Hoag turned on the overhead lights to stop the pickup truck. The pickup truck sped away at a high rate, "screeching [] the tires." Deputy Hoag then activated the patrol siren. The pickup truck failed to stop at a stop sign, turned left onto the highway, causing traffic to "brake heavily to avoid a collision," and drove erratically, "fishtailing back and forth," and entered a dirt parking lot, passing pedestrians and other vehicles, including a tow truck. The tow truck

driver, Ted Smith, heard over the police scanner that the deputies were in pursuit of the pickup truck and saw the pickup truck pass within five feet of the tow truck, making eye contact with the driver, defendant. Smith also saw the sheriff's patrol vehicle which had on its lights and siren.

The pickup truck continued and failed to stop at a railroad crossing where the guard arms were coming down, hitting one of the arms. The pickup truck turned onto a dirt access road and collided with a barrier of brush, stopping the pickup truck. Deputy Hoag was about 20 to 30 yards behind the pickup truck at the time. The pickup truck's driver and passenger got out and ran in opposite directions. The driver, defendant, had brown hair and was wearing a dark colored T-shirt and blue jeans. Deputy Hoag pursued defendant on foot. Defendant crossed the railroad tracks and headed back towards the highway. Deputy Hoag was unable to find defendant but heard over his radio that Deputy Knox had detained someone in the front yard of a home. Deputy Knox had driven the patrol car to the area where defendant had fled. So did Smith who had been watching defendant get out of the pickup truck and run. Smith drove his tow truck after defendant, stopped in an intersection, got out and confronted defendant. Defendant tried to hit Smith who was chasing defendant. Smith grabbed defendant and knocked him to the ground. Smith positively identified defendant as the driver of the pickup truck.

Deputy Hoag found that defendant had been detained by Deputy Knox and Smith. Defendant wore a dark shirt and blue

jeans. When Deputy Hoag asked defendant what he was doing, defendant responded that he had a suspended license and did not want to go to jail. Defendant stated that he had been using the pickup truck to transport debris to another location.

Defendant did not testify and called no witnesses to testify on his behalf. Defense counsel questioned Deputy Hoag concerning the lack of a description of the passenger in his report. Deputy Hoag believed that the passenger had dark hair and a medium build, the same as defendant. Defense counsel elicited that defendant did not own the truck and no fingerprints were taken from the truck. Defense counsel also elicited that defendant never stated that he had been driving. Defense Exhibit A, a drawing by Smith of the direction his tow truck was facing while listening to the scanner, was admitted into evidence.

DISCUSSION

I

Defendant first contends that insufficient evidence supports his conviction for felony evading because there was no evidence that Deputy Hoag activated the forward-facing red lamp. We find sufficient evidence supports defendant's conviction.

In considering a sufficiency of the evidence claim, we view the evidence in the light most favorable to the judgment, presume in support of the judgment every fact which may be reasonably deduced from the evidence, and "determine, in light of the whole record whether *any* rational trier of fact could have found the essential elements of the crime beyond a

reasonable doubt. [Citation.]" (*People v. Davis* (1995) 10 Cal.4th 463, 510; *People v. Stanley* (1995) 10 Cal.4th 764, 792-793; *People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

Felony evading (Veh. Code, § 2800.2, subd. (a)) occurs when "a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property." The prosecution must prove, inter alia, that "[t]he peace officer's motor vehicle [] exhibit[ed] at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp." (Veh. Code, § 2800.1, subd. (a)(1).)

Here, defendant claims there was no evidence that the officer activated the red lights. We disagree.

Deputy Hoag testified that his patrol car had a light bar on top that included a forward-facing red light and that when he attempted to pull the pickup truck over, he activated the light bar. The jury could reasonably conclude that the emergency lights the deputy activated included the red forward-facing light.

Defendant's reliance upon *People v. Brown* (1989) 216 Cal.App.3d 596 (*Brown*) and *People v. Acevedo* (2003) 105 Cal.App.4th 195 (*Acevedo*) is misplaced. In *Brown,* the officer testified that her patrol car had three light signals (flashing amber light to the rear, blinking blue and white lights to the front and rear, and a rotating red, white and blue lights) and each was activated by a separate switch position. The officer

testified that she could not recall which switch position she activated. (*Brown, supra*, 216 Cal.App.3d at pp. 599-600.)

In *Acevedo*, the officer testified that he activated his overhead emergency lights and siren in his pursuit of the defendant. The officer did not testify that his overhead lights included a forward-facing red light. (*Acevedo, supra,* 105 Cal.App.4th at pp. 197-199.)

Here, Deputy Hoag did not testify that his patrol car had three light signals with separate switch positions. *Brown* is thus distinguishable. Deputy Hoag testified that he had a light bar with a forward-facing red light and that he activated his light bar when he tried to stop defendant. *Acevedo* is thus distinguishable.

Because defendant does not otherwise challenge the evidence adduced at trial to support the offense of felony evading, we will not discuss the evidence further. Sufficient evidence supports his conviction for felony evading.

II

Defendant next challenges the instruction on the felony evading offense. He argues that the trial court gave the jury two theories to support the offense, that is, property damage or at least three violations of the law, and it cannot be determined which theory the jury relied upon in reaching its verdict. Further, as defendant notes, the trial court failed to define the violations of the law, that is, the failure to stop at a stop sign, the failure to stop at the railroad crossing, driving on a suspended license, and reckless driving. We

conclude that no unanimity was required as to the means of committing felony evading and that any error in failing to define the violations of the law was harmless beyond a reasonable doubt.

In instructing the jury on felony evading, the trial court gave the jury CALCRIM No. 2181 which provided:

"The defendant is charged in Count 1 with evading a peace officer with wanton disregard for safety.

"To prove that the defendant is guilty of this crime, the People must prove that:

"1. A peace officer driving a motor vehicle was pursuing the defendant;

"2. The defendant, who was also driving a motor vehicle, willfully fled from or tried to elude the officer, intending to evade the officer;

"3. During the pursuit, the defendant drove with willful or wanton disregard for the safety of persons or property;

"AND

"4. All of the following were true:

"a. There was at least one lighted red lamp visible from the front of the peace officer's vehicle;

"b. The defendant either saw or reasonably should have seen the lamp;

"c. The peace officer's vehicle was sounding a siren as reasonably necessary;

"d. The peace officer's vehicle was distinctively marked;

"AND

"e. The peace officer was wearing a distinctive uniform.

"A person employed as a police officer by Tehama County Sheriff's Department is a peace officer.

"Someone commits an act willfully when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

"A person acts with wanton disregard for safety when (1) he or she is aware that his or her actions present a substantial and unjustifiable risk of harm, and (2) he or she intentionally ignores that risk. The person does not, however, have to intend to cause damage.

"Driving with willful or wanton disregard for the safety of persons or property includes, but is not limited to, causing damage to property while driving or committing three or more violations that are each assigned a traffic violation point.

"Failure to stop at a stop sign, Vehicle Code section 21802; driving on a suspended license, Vehicle Code section 14601.1(a); failure to stop at a railroad crossing, Vehicle Code section 22451(b); and, reckless driving, Vehicle Code section 23103(a), are each assigned a traffic violation point.

"A vehicle is distinctively marked if it has features that are reasonably noticeable to other drivers, including a red lamp, siren, and at least one other feature that makes it look different from vehicles that are not used for law enforcement purposes.

"A distinctive uniform means clothing adopted by a law enforcement agency to identify or distinguish members of its force. The uniform does not have to be complete or of any particular level of formality. However, a badge, without more, is not enough."

Willful or wanton conduct is shown by, but is not limited to, defendant "causing damage to property while driving or committing three or more violations that are each assigned a traffic violation point." (CALCRIM No. 2302.) "[W]here a statute prescribes disparate alternative means by which a single offense may be committed, no unanimity is required as to which of the means the defendant employed so long as all the members of the jury are agreed that the defendant has committed the offense as it is defined by the statute. It follows that even though the evidence establishes that the defendant employed two or more of the prescribed alternate means, and the jury disagrees on the manner of the offense, there is no infirmity in the unanimous determination that the defendant is guilty of the charged offense." (*People v. Sutherland* (1993) 17 Cal.App.4th 602, 613 (*Sutherland*).)

The drunk driving with injury statute (Veh. Code, § 23153, subd. (a)) was considered in *People v. Mitchell* (1986) 188 Cal.App.3d 216 (*Mitchell*). *Mitchell* concluded that unanimity was not required, that is, the jury was not required to determine whether defendant violated the basic speed law or engaged in a speed contest, in driving under the influence and committing an act forbidden by law that causes injury to another

person. (*Id.* at p. 218.) *Mitchell* stated: "[T]he jurors need not be instructed that to return a verdict of guilty they must all agree on the specific theory -- it is sufficient that each juror is convinced beyond a reasonable doubt that the defendant is guilty of the crime charged as it is defined by the statute." (*Id.* at p. 222.)

We find *Mitchell* to be analogous. The jury did not have to agree on the specific theory, that is, whether defendant caused property damage or committed three or more driving violations, as long as the jury agreed defendant drove with willful or wanton disregard for the safety of persons or property. There was evidence that all of the traffic violations and property damage occurred while defendant was driving the car. The jury could have believed defendant caused damage to property (guard arm) or committed all three traffic violations. Unanimity on the legal theory was not required in the prosecution of defendant for a single act of felony evading, that is, driving in a willful or wanton disregard for the safety of persons or property while fleeing from a pursuing peace officer. Further, due process did not require a unanimity instruction. (*People v. Wilson* (2008) 44 Cal.4th 758, 801-802; *People v. Santamaria* (1994) 8 Cal.4th 903, 918-919; *Sutherland, supra,* 17 Cal.App.4th at pp. 618-619.)

The trial court did not define the violations of the law at all. It simply cited the Vehicle Code sections for each violation, that is, failure to stop at a stop sign, failure to stop at a railroad crossing, driving on a suspended license, and

reckless driving. The violations are not commonly understood nor were the violations adequately conveyed by the instruction given.[1] (See *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1334-1339.) Nevertheless, the error was harmless beyond a reasonable doubt. There was no dispute that defendant ran a stop sign, failed to stop at a railroad crossing, hitting one of the guard arms as it came down, and drove recklessly, fishtailing, screeching his tires, causing traffic to skid to avoid a collision, and sped past pedestrians in a dirt parking lot, as Deputy Hoag testified. Further, the parties stipulated the defendant's driver's license was suspended. The only issue defendant disputed at trial was whether he was the driver of the

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[1] For example, failure to stop at a railroad crossing is not so straightforward. Vehicle Code section 22451 provides:

"(a) The driver of any vehicle or pedestrian approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

"(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

"(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

"(b) No driver or pedestrian shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

"(c) Whenever a railroad or rail transit crossing is equipped with an automated enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518."

pickup truck. Any error was harmless beyond a reasonable doubt. (*People v. Flood* (1998) 18 Cal.4th 470, 504-507.)

III

Defendant contends his conviction for driving on a suspended license must be reversed because the instruction removed the requirement that the prosecution prove that defendant *knew* his license was suspended. The Attorney General initially responds that the invited error doctrine applies. We conclude that any error was harmless beyond a reasonable doubt.

In discussing the jury instruction on the charged offense of driving on a suspended license, the following discourse ensued:

"The Court: . . . It's instruction 2220, driving with suspended or revoked license. Probably needs some modification in view of the stipulation.[2]

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2 CALCRIM No. 2220 provides:

"The defendant is charged [in Count ____] with driving while (his/her) driving privilege was suspended/[or] revoked) [in violation of _____ <*insert appropriate code section[s]*>].

"To prove that the defendant is guilty of this crime, the People must prove that:

"1. The defendant drove a motor vehicle while (his/her) driving privilege was (suspended/[or] revoked) (for _____ <*insert basis for suspension or revocation*>];

"AND

"2. When the defendant drove, (he/she) knew that (his/her) driving privilege was (suspended/ [or] revoked).

"[If the People prove that:

"[¶] . . . [¶]

"[Prosecutor]: Asking the Court for clarification here.

"The Court: Well, under -- it's paragraph or Subparagraph 1, I guess, under Number 2. Number 2 is when the defendant drove he knew that his driver's license was suspended. It goes on, if the people prove that, one, the California Department of Motor Vehicles mailed a notice to the defendant telling him his driver's license had been suspended; two, the notice was sent to the most recent address reported to the Department, or any more

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"1. The California Department of Motor Vehicles mailed a notice to the defendant telling (him/her) that (his/her) driving privilege had been (suspended/[or] revoked);

"2. The notice was sent to the most recent address reported to the department [or any more recent address reported by the person, a court, or a law enforcement agency];

"AND

"3. The notice was not returned to the department as undeliverable or unclaimed;

"Then you may, but are not required to, conclude that the defendant knew that (his/her) driving privilege was (suspended/[or] revoked).]

"[If the People prove beyond a reasonable doubt that a court informed the defendant that (his/her) driving privilege had been (suspended/[or] revoked), you may but are not required to conclude that the defendant knew that (his/her) driving privilege was (suspended/[or] revoked).]

"[A *motor vehicle* includes a (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/ _____ <*insert other type of motor vehicle*>).]

"[The term *motor vehicle*] is defined in another instruction to which you should refer.]"

recent address reported by the person to a law enforcement agency; and three --

"[Defense counsel]: As since [*sic*] we stipulated his driver's license was suspended, we could just modify that to prove the defendant guilty of the crime [] [t]he [P]eople must prove that the defendant drove a motor vehicle while his driver's license was suspended. And then we could just say there was a stipulation that his driver's license is suspended.

"[Prosecutor]: People would be fine with that.

"The Court: Doesn't have to be any mention made of failure to appear then on Number 1?

"[Prosecutor]: No.

"The Court: All right. So after the instruction reads, the defendant drove a motor vehicle while his driver's license was suspended, period. And then you wanted language to the effect the parties have stipulated that the defendant's license was suspended?

"[Defense counsel]: Yes.

"[Prosecutor]: Yes, your Honor. And then I want the date on the suspended.

"[Defense counsel]: At the time of the offense, yes.

"[Prosecutor]: That's fine, your Honor.

"[Defense counsel]: On September 4th.

"[Prosecutor]: September 4, 2007.

"The Court: Okay. Let me go over this and make sure it's clear. I'm going to read it as follows: Defendant is charged in Count 2 with driving while his driver's license was

suspended. [¶] To prove that the defendant is guilty of this crime, the [P]eople must prove that, one, the defendant drove a motor vehicle while his driver's license was suspended. Parties have stipulated defendant's driver's license was suspended at the time of the offense -- of the alleged offense, September 4, 2007. And that would be the entirety of the instruction. Everything on the printed form after failure to appear would be stricken, correct?

"[Defense counsel]: Correct, your Honor."

Defense counsel and the prosecutor stipulated in front of the jury that "on September 4th 2007, that [defendant's] privilege to operate a motor vehicle in California was suspended." As defendant argues, the parties did not stipulate that defendant knew his license was suspended. The instruction on the charged offense of driving on a suspended license removed the element of knowledge.[3]

However, we find any error harmless beyond a reasonable doubt. "An instructional error that improperly describes or omits an element of the crime from the jury's consideration is subject to the 'harmless error' standard of review set forth in

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[3] The trial court instructed the jury on driving on a suspended license as follows:

"The defendant is charged in Count 2 with driving while his driver's license was suspended. To prove that the defendant is guilty of this crime, the [P]eople must prove that the defendant drove a motor vehicle while his driver's license was suspended. Parties have stipulated that the defendant's driver's license was suspended at the time of the alleged offense, September 4th, 2007."

Chapman . . . . [Citation.]" (*People v. Lamas* (2007) 42 Cal.4th 516, 526.) There was uncontradicted evidence of defendant's knowledge. When Deputy Hoag arrested defendant, defendant stated that he had a suspended license and did not want to go to jail. Defense counsel's only challenge to such testimony was whether defendant stated that he was driving. The only issue raised by defense counsel in argument was that the prosecutor had failed to show defendant was the driver of the pickup truck. On this record, the evidence was uncontradicted that defendant knew his license was suspended. The instructional error was harmless beyond a reasonable doubt.

IV

Defendant contends that he did not knowingly and intelligently waive his right against self-incrimination and right to confrontation when he admitted the prior prison term allegation after the jury convicted him on the underlying offenses. Defendant did not obtain a CPC (Pen. Code, § 1237.5). In his supplemental brief, defendant asserts that a CPC is not required to raise this issue because "the judgment of conviction resulted from a jury verdict and not a guilty or no contest plea."[4] Defendant claims that Penal Code section 1237.5 "is

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[4] Penal Code section 1237 provides:

"An appeal may be taken by the defendant:

"(a) From a final judgment of conviction except as provided in Section 1237.1 and Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a

limited by its very terms to appeals taken from a judgment of conviction upon a guilty or no contest plea."[5] Defendant argues that his "conviction was not based on his admission to the prior prison commitment; but rather it was factored in his sentence." He claims that case law, specifically *People v. Perry* (1984) 162 Cal.App.3d 1147 (*Perry*) and *People v. Williams* (1980) 103 Cal.App.3d 507 (*Williams*), has required a CPC to challenge an admission to an enhancement where the defendant likewise entered a no contest or guilty plea to the underlying offenses. After noting the policy justifications for the requirement, defendant states that it would be a waste of judicial resources to require him to request a CPC and the trial court to consider whether to issue one.

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defendant for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment the court may review any order denying a motion for a new trial.

"(b) From any order made after judgment, affecting the substantial rights of the party."

[5] Penal Code section 1237.5 provides:

"No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met:

"(a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

"(b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court."

Notably, defendant does not cite any authority for the proposition that a CPC is not required under the circumstances here. Relying exclusively upon *Perry, supra,* 162 Cal.App.3d 1147, the People claim a CPC is required. We conclude that defendant's failure to obtain a CPC in order to challenge a procedural irregularity in the entry of his plea to the prior prison term allegation renders the issue noncognizable on appeal.

"Under [Penal Code] section 1237.5 and [California Rules of Court,] rule 31(d), first paragraph, the Court of Appeal generally may not proceed to the merits of the appeal, but must order dismissal thereof, unless the defendant has filed a statement of certificate grounds as an intended notice of appeal, and has obtained a certificate of probable cause, in full compliance therewith. [¶] Under rule 31(d), second paragraph, the Court of Appeal may nevertheless proceed to the merits of the appeal if the defendant has based his appeal solely on noncertificate grounds and has filed a notice of appeal so stating. It may accordingly address noncertificate issues. But it must decline to address certificate issues: *the presence of a notice of appeal stating noncertificate grounds does not supply the absence of a statement of certificate grounds and a certificate of probable cause*." (*People v. Mendez* (1999) 19 Cal.4th 1084, 1099, italics added.)[6]

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[6] California Rules of Court, former rule 31(d) [now rule 8.304], first paragraph, provided: "If a judgment of conviction is entered upon a plea of guilty or nolo contendere [in the

In *Perry, supra,* 162 Cal.App.3d 1147, after the court advised the defendant that a motion to strike a personal use of a firearm allegation could not be brought on the ground that the firearm was inoperable, defendant entered a plea of guilty to robbery and admitted the allegation and was sentenced to prison. On appeal, the defendant claimed the firearm was inoperable and that a motion to strike on such ground should have been considered and granted. (*Id.* at pp. 1149-1150.) *Perry* dismissed the appeal, finding that the lack of a CPC barred the defendant from raising error related to the court's advice prior to his plea. (*Id.* at pp. 1150-1152, 1153.) In concluding that Penal Code section 1237.5 applied to "an appeal which questions proceedings before appellant's admission of the use of a

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superior court], the defendant shall, within 60 days after the judgment is rendered, file as an intended notice of appeal the statement required by section 1237.5 . . . ; but the appeal shall not be operative unless the trial court executes and files the certificate of probable cause required by that section. Within 20 days after the defendant files the statement the trial court shall execute and file either a certificate of probable cause or an order denying a certificate and shall forthwith notify the parties of the granting or denial of the certificate."

Former Rule 31(d) stated in its second paragraph: "If the appeal from a judgment of conviction entered upon a plea of guilty or nolo contendere [in the superior court] is based solely upon grounds (1) occurring after entry of the plea which do not challenge its validity or (2) involving a search or seizure, the validity of which was contested pursuant to section 1538.5 . . . , the provisions of section 1237.5 . . . requiring a statement by the defendant and a certificate of probable cause by the trial court are inapplicable, but the appeal shall not be operative unless the notice of appeal states that it is based upon such grounds."

firearm," *Perry* stated: "[Penal Code s]ection 1237.5 applies to a judgment of conviction after a 'plea of guilty or nolo contendere.' At issue here is the validity or truth of a 'use' allegation. A technical, literal argument could be made that defendants do not 'plead guilty' to enhancement allegations, they 'admit' them. We can see no reason to draw such a fine distinction regarding the words used. Appellant's attack goes to this guilt or innocence, the truth of the alleged enhancement, and would require consideration of evidence. Such issues have been removed from consideration by the plea and admission." (*Id.* at p. 1151.) *Perry* cited cases in which no CPC was required to review issues related to a *trial* on an enhancement even though the defendant had entered a plea to an underlying charge. (*Id.* at p. 1151, fn. 3.[7])

"Admissions of enhancements are subject to the same principles as guilty pleas. [Citation.] A guilty plea admits every element of the offense charged and is a conclusive admission of guilt. [Citations.] It waives any right to raise questions about the evidence, including its sufficiency. [Citation.] Thereafter, a defendant may appeal upon the issuance of a certificate of probable cause and may raise only 'reasonable constitutional, jurisdictional, or other grounds

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[7] The other case cited by defendant, *Williams, supra,* 103 Cal.App.3d 507, involved a guilty plea to robbery with a prior prison term in exchange for the dismissal of other counts and allegations. (*Id.* at p. 510.) *Williams* concluded that the lack of a CPC barred the defendant's claim that he never admitted the prior. (*Id.* at pp. 510-511.)

going to the legality of the proceedings; . . .' [Citations.]" (*People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785.) In *Lobaugh*, the defendant pled guilty to robbery and admitted a firearm-use enhancement, a prior serious felony conviction, and a prior prison term allegation. (*Id.* at p. 783.) The defendant's challenge to the sufficiency of the evidence to support his firearm-use enhancement was not cognizable on appeal because he failed to obtain a CPC and, in any event, the defendant's admission waived the issue. (*Id.* at p. 785.)

We conclude that Penal Code section 1237.5 applies to an enhancement allegation to which a defendant has entered a plea. Here, defendant entered a negotiated plea, admitting a prior prison term allegation in exchange for dismissal of the remaining allegations. His admission removed from consideration the evidence supporting the allegation and his attack raises a procedural irregularity in obtaining his admission.

In *People v. Thurman* (2007) 157 Cal.App.4th 36 (*Thurman*), a jury convicted the defendant of assault by means of force likely to cause great bodily injury, criminal threats, second degree robbery, and false imprisonment by violence. The jury acquitted defendant of attempted murder and the lesser offense of attempted voluntary manslaughter but was unable to reach a verdict on the lesser offense of attempted second degree murder. The jury also deadlocked on vehicle theft and carjacking and on hate crime allegations. (*Id.* at pp. 39-40.) After declaring a mistrial on the deadlocked counts and the allegations, the court scheduled the case for retrial. The prosecutor's motion to

dismiss the attempted murder charge was granted but the defendant's motion to dismiss the other counts was denied. The defendant then entered a negotiated plea to carjacking in exchange for a concurrent three-year term on that count and dismissal of the vehicle theft count and remaining allegations. (*Id.* at pp. 40, 41.) On appeal, the defendant raised issues related to the carjacking count. Specifically, the defendant contended that the trial court erroneously denied his motion to dismiss, that the carjacking was based on the same conduct as the robbery, and insufficient evidence supported the carjacking. Although conceding he did not obtain a CPC, the defendant claimed that the trial court had "assured him that he could appeal from the judgment with respect to all issues pertaining to [the carjacking count]." (*Id.* at pp. 41-42.) *Thurman* concluded that the record did not support the defendant's claim of an assurance that a CPC was not required nor would such a promise be enforceable. (*Id.* at pp. 42-43.) *Thurman* agreed that "courts should tell defendants who are contemplating guilty pleas that they have only limited appeal rights following a guilty plea" but saw "no reason for the court to have reminded trial counsel that he would also have to obtain a certificate of probable cause." (*Id.* at p. 44.)

Thurman is on point here. Further, defendant is trifling with the courts by attempting to better the bargain on appeal. (*People v. Hester* (2000) 22 Cal.4th 290, 295.) After the jury reached its verdicts on the underlying offenses, defendant admitted a prior prison term (Pen. Code, § 667.5, subd. (b)) for

a 1998 violation of Health and Safety Code section 11377, subdivision (a), in exchange for dismissal of a prior prison term for a 1996 violation of Penal Code section 496, subdivision (a), and three 2003 convictions for driving on a suspended license (Veh. Code, §§ 14601.1, 14601.2).

"'"When a guilty [or nolo contendere] plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement.'" [Citations.] 'Defendant's attack on the legality of [the plea entered in exchange for dismissal of other allegations] is an effort to unilaterally improve, and thus alter, the terms of that which was agreed and thus should not be permitted without a certificate of probable cause.' [Citation.]" (*People v. Cuevas* (2008) 44 Cal.4th 374, 383.)

Defendant's claim of procedural irregularity challenges the validity of his negotiated plea to the prior prison term allegation. To raise this claim, he must have a CPC. (*People v. Panizzon* (1996) 13 Cal.4th 68, 76.) His failure to obtain a CPC renders his claim noncognizable on appeal.

V

Finally, defendant contends that the record is ambiguous with respect to the court's imposition of the financial obligations on count II. The Attorney General agrees.

The court imposed a $20 court security fee on both counts. For the misdemeanor driving offense in count II, the court imposed a concurrent six-month term and ordered defendant to

"pay a fine in the amount of $1,100; pay that amount including security fee, restitution fine, and penalty assessments." The court suspended the fine on count II pending defendant's successful completion of parole on count I. The clerk's minutes reflect the $20 court security fee and the $1,100 fine on count II. The abstract of judgment does not reflect sentencing on count II. With respect to count II, the probation report had recommended that the court impose a $1,100 fine "including a security fee, restitution fine, and penalty assessments."

The abstract of judgment must reflect all fees and fines; the inclusion of the fees and fines assists state and local agencies in collection. (Pen. Code, § 1205, subd. (c); *People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

The statutory maximum fine for a violation of Vehicle Code section 14601.1, subdivision (a), is $1,000. As defendant argues and the Attorney General concedes, the record is ambiguous as to the base amount of the fine and the penalty assessments.

We will remand to the trial court for clarification of the fees and fines imposed on count II and for a corrected/amended abstract of judgment.

DISPOSITION

The matter is remanded to the trial court for clarification of the fees and fines imposed for driving on a suspended license, a misdemeanor, count II, and amendment/correction of the abstract to so reflect. A certified copy of the amended/corrected abstract of judgment is to be forwarded to the

Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

SIMS, Acting P. J.

We concur:

HULL, J.

CANTIL-SAKAUYE, J.