

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re BARTHOLOMEW D., a Person
Coming Under the Juvenile Court Law.**

THE PEOPLE,
Plaintiff and Respondent,
v.
BARTHOLOMEW D.,
Defendant and Appellant.

A106781

**(Alameda County
Super. Ct. No. J186749)**

Bartholomew D. appeals a dispositional order committing him to the California Youth Authority (CYA) after the juvenile court found he committed a robbery and personally used a deadly or dangerous weapon (BB gun) in the commission of that felony. (Pen. Code, §§ 211, 12022, subd. (b).)¹ In the published portion of the opinion, we address appellant's contention that evidence of his use of a BB gun is insufficient to support the finding of personal use of a dangerous weapon under section 12022, subdivision (b). In the unpublished portion, we agree with appellant's contention that his precommitment custody credits must be recalculated.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part II.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

BACKGROUND

The Offense

The victim delivered pizzas for a pizzeria. On the night of the robbery, a young male voice placed a telephone order for two pizzas to be delivered to 415 West Merle Court.

When the victim arrived with the pizzas at 415 West Merle Court, appellant was standing at the front of the driveway. He informed the victim that the house he was looking for was in the back and accompanied the victim down the driveway. At the rear of the driveway, appellant pointed what appeared to be a shiny silver semiautomatic handgun at the victim's head, demanded his money, and ordered him to drop everything. The victim dropped the pizzas on the driveway and gave appellant his money. Appellant told the victim to leave. Just as the victim got to his car, appellant demanded his cell phone. The victim threw the phone to appellant and drove back to the pizzeria.

Before the victim arrived back at the pizzeria, the same caller who had placed the order telephoned the pizzeria again to say his order had not yet been delivered. The receptionist told him she would try to contact the deliveryman. She never did so because two minutes after she took the call saying the pizzas had not yet been delivered, the victim entered the pizzeria and said he had just had a gun shoved in his face. He and the receptionist contacted the police. Upon their arrival at the pizzeria, the police instructed the receptionist to telephone the number from which the order had been placed and say she was sending a free pizza. The receptionist spoke to the same caller who had placed the order. He directed her to have the pizza delivered to 435 West Merle Court instead of 415 West Merle Court.

The police went to 435 West Merle Court and rang the bell. Appellant's mother answered the door and consented to a search of the house. In appellant's bedroom, the police recovered a receipt for the pizzas that had been ordered for 415 West Merle Court. They also seized a black BB gun from the television stand in appellant's bedroom. At trial, the victim was unable to identify the BB gun as the gun used in the robbery.

Appellant presented an alibi defense. He denied being the robber and denied owning a gun. He said the BB gun found in his bedroom belonged to a friend who was paying him to fix it. He acknowledged he had never before fixed a gun.

Proceedings

The juvenile court sustained the juvenile wardship petition (Welf. & Inst. Code § 602) following a contested hearing. It committed appellant to CYA for a maximum confinement of 6 years, 10 months, less 38 days of custody credit, with commitment stayed pending placement review.

DISCUSSION

I. Substantial Evidence a BB Gun Is a Dangerous Weapon

Appellant does not challenge the robbery finding, nor does he now claim that he did not use a BB gun during the commission of the robbery. He contends there is insufficient evidence to support the finding that the particular BB gun he used was a deadly or dangerous weapon, within the meaning of section 12022, subdivision (b).

When a defendant claims insufficient evidence to support a finding, the appellate court “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We presume the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Lewis* (1990) 50 Cal.3d 262, 277.) The same standard of review applies to claims of insufficient evidence by a juvenile criminal defendant. (See *In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.)

Section 12022, subdivision (b), states, in pertinent part: “Any person who personally uses a deadly or dangerous weapon in the commission of a felony . . . shall be punished by an additional and consecutive term of imprisonment in the state prison for one year” The statute does not define “deadly or dangerous weapon.” To find a section 12022, subdivision (b) allegation true, the fact finder must conclude that the defendant himself intentionally displayed an instrument capable of inflicting great bodily

injury or death in a menacing manner during the crime. (*People v. Wims* (1995) 10 Cal.4th 293, 302.)

Cases have historically recognized a pellet gun as a dangerous weapon in the context of penal statutes in which proof that the perpetrator was “armed with a dangerous weapon” is an element of the crime. Under former section 211a, for example, conviction of first degree robbery required the robbery to be perpetrated by a person armed with a dangerous or deadly weapon.² *People v. Sherman* (1967) 251 Cal.App.2d 849 affirmed a conviction of first degree robbery, rejecting the defendant’s argument that no evidence was presented that the pellet gun used in the robbery, which the victim had described as resembling a German Luger, constituted a deadly weapon. “[T]he evidence shows, and defendant conceded, that the gun was a ‘dangerous weapon’; The words ‘dangerous or deadly’ are used disjunctively. ‘Thus, it is not necessary to show that the weapon is deadly so long as it can be shown that it is dangerous. [Citations.] Any gun, even a short one, may be a ‘dangerous weapon’ within the meaning of the statute since it is capable of being used as a bludgeon. . . . A metal gun the size and shape of [the pellet gun used in the robbery], which has the appearance of a Luger, is sufficient to constitute a ‘dangerous weapon’ within the meaning” of former section 211a. (*Sherman, supra*, at pp. 856-857.)

In *People v. Burns* (1969) 270 Cal.App.2d 238, the defendant was charged in the accusatory pleading with an arming enhancement under former section 3024. The jury found defendant guilty of first degree robbery but found he was not armed with a *deadly* weapon in the commission of the offense, as required to prove the section 3024 enhancement. (*Burns, supra*, at pp. 253-254, italics added.) *Burns* concluded there was no inconsistency in the verdict. “At the time defendant was arrested a pellet gun was found in the car. [The victim] identified this gun as the robbery weapon. Accordingly, under the state of the evidence the jury could conclude that this gun was used in the robbery and that it was a dangerous weapon. Proof that the robber was armed with a gun that could be a dangerous weapon would support a conviction of robbery of the first

² Section 211a was repealed in 1986 (Stats. 1986, ch. 1428, § 1), and “dangerous or deadly weapon” no longer determines the degree of robbery, now specified in section 212.5.

degree. This is true even though it would not establish that he was armed with a ‘deadly weapon.’” (*Id.* at p. 254.)

In *People v. Graham* (1969) 71 Cal.2d 303, the defendant kicked the robbery victim, and the issue was whether a shoe was a dangerous weapon within the meaning of former section 211a. Citing *People v. Raleigh* (*People v. Raleigh* (1932) 128 Cal.App. 105), *Graham* distinguished between two classes of “dangerous or deadly weapons” for purposes of the statute. “. . . There are, first, those instrumentalities which are weapons in the strict sense of the word, and, second, those instrumentalities which are not weapons in the strict sense of the word, but which may be used as such. The instrumentalities falling in the first class, such as guns, dirks and blackjacks, which are weapons in the strict sense of the word and are “dangerous or deadly” to others in the ordinary use for which they are designed, may be said as a matter of law to be “dangerous or deadly weapons.” This is true as the ordinary use for which they are designed establishes their character as such. The instrumentalities falling into the second class, such as ordinary razors, pocket-knives, hatpins, canes, hammers, hatchets and other sharp or heavy objects, which are not weapons in the strict sense of the word and are not “dangerous or deadly” to others in the ordinary use for which they are designed, may not be said as a matter of law to be “dangerous or deadly weapons.” When it appears, however, that an instrumentality other than one falling within the first class is capable of being used in a “dangerous or deadly” manner, and it may be fairly inferred from the evidence that its possessor intended on a particular occasion to use it as a weapon should the circumstances require, we believe that its character as a “dangerous or deadly weapon” may be thus established, at least for the purposes of that occasion.’ [Citation.]” (*Graham, supra*, at pp. 327-328.)

Subsequent cases have relied on *Sherman, Burns*, and *Graham* in analyzing challenges to a section 12022, subdivision (b) enhancement. In *People v. Montalvo* (1981) 117 Cal.App.3d 790, the jury found true the section 12022, subdivision (b) allegation that the defendant used a dangerous weapon--a pellet gun--in a robbery. (*Montalvo, supra*, at pp. 792, 796.) Although it reversed on unrelated grounds, *Montalvo*

rejected the defendant's contention that his sentence was improperly enhanced. Based on the *Burns* and *Sherman* holdings that a pellet gun "is in fact a dangerous weapon," *Montalvo* concluded, without further analysis, that a section 12022, subdivision (b) enhancement based on use of a pellet gun was proper. (*Montalvo, supra*, at p. 797.)

In *People v. Schaefer* (1993) 18 Cal.App.4th 950, the defendant admitted a section 12022.5, subdivision (a) enhancement--use of a firearm--during a robbery, based on his use of a pellet gun. *Schaefer* agreed the enhancement could not stand because the Legislature subsequently removed "pellet gun" from the statutory definition of "firearm." (*Schaefer, supra*, at p. 951.) Nevertheless, relying on *Montalvo*'s holding that a pellet gun was a dangerous or deadly weapon under section 12022, subdivision (b), *Schaefer* concluded the defendant's admission of the section 12022.5, subdivision (a) enhancement necessarily included an admission of a section 12022, subdivision (b) enhancement, and modified his conviction accordingly. (*Schaefer, supra*, at pp. 951, 952.)

In *People v. Reid* (1982) 133 Cal.App.3d 354, the defendant used a toy gun, made of metal with a plastic grip, in a robbery. (*Id.* at p. 364.) He contended his section 12022, subdivision (b) enhancement should be stricken because there was no evidence he intended to use the toy gun as a club. (*Reid, supra*, at p. 364.) In resolving the issue, *Reid* applied the "dangerous or deadly weapon" distinction to section 12022, subdivision (b), that *Graham, supra*, 71 Cal.2d 303 had applied to former section 211a. It analyzed instrumentalities that are weapons in the strict sense of the word differently from instrumentalities that are not strictly weapons but are capable of use as such, when coupled with evidence the user intended that the instrumentality could be so used. It concluded a toy gun fell in the second category because it was "clear[ly]" not a weapon in the strict sense. (*Reid, supra*, at p. 367.) It struck the enhancement because, although the toy gun was capable of being used in a dangerous manner, i.e., as a club, there was insufficient evidence that the defendant intended to do so. (*Ibid.*)

Similarly, *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1574, struck an enhancement in which the instrumentality used during a robbery was a starter pistol

because there was insufficient evidence to support the finding. It observed that the capacity of a starter pistol to inflict injury is not a matter of common knowledge, and there was no evidence regarding the starter pistol's capacities as a dangerous weapon, so as to be a dangerous weapon as a matter of law, i.e., a weapon in *Graham's* "strict sense of the word" category. (*Godwin, supra*, at p. 1574.) Nor was there evidence that the defendant intended to use it as a bludgeon, although it could have been so used. (*Id.* at p. 1574.)

In *In re Arturo H.* (1996) 42 Cal.App.4th 1694, the defendant was found to have possessed a pellet gun on school grounds, a violation of section 626.10, which specifically proscribes possession of "any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action . . ." Defendant argued the finding must be reversed because there was no evidence his gun was *operable*. He reasoned that by defining the prohibited instrumentality in functional terms, the statute referred only to operable pellet guns. *Arturo H.* disagreed. It first noted the many cases that have interpreted the laws prohibiting firearms as applying to inoperable as well operable firearms, given the underlying purpose of the Dangerous Weapons' Control Law (§ 12000 et seq., including § 12022, subd. (b)) to deter the danger that derives not only from the weapon, but from the defensive reaction of people to the weapon. (*Arturo H., supra*, at pp. 1697, 1698.) It then concluded that the same rationale applies to pellet guns, "which are reasonably perceived as dangerous weapons capable of inflicting serious injury," citing *Schaefer, supra*, 18 Cal.App.4th 950, *Montalvo, supra*, 117 Cal.App.3d 790, and *Sherman, supra*, 251 Cal.App.2d 849. (*Arturo H., supra*, 42 Cal.App.4th at p. 1698.)

Unlike *Arturo H.*, we interpret here an enhancement statute that contains no definition of the "deadly or dangerous weapons[s]" which will trigger its application. The Dangerous Weapons' Control Act (§ 12000 et seq.) defines BB guns for purposes of sections 12551 and 12552 (prohibiting the sale or furnishing of any BB device to minors), as "any instrument that expels a metallic projectile, such as a BB or a pellet, . . . through the force of air pressure, gas pressure, or spring action, or any spot marker gun."

(§ 12001, subd. (g).) The definition comports with the general definition of a BB gun: “a smooth bore air gun actuated by a spring loaded plunger that upon release from the cocked position compresses the air behind the pellet and propels it from the tube.” (Webster’s 3d New Internat. Dict. (2002) p. 189.) Although the Dangerous Weapons’ Control Act does not specifically apply its section 12001, subdivision (g), definition of “BB device” to “dangerous weapon[s]” referred to in section 12022, subdivision (b), the policy considerations supporting criminalizing the possession of BB guns and pellet guns on school grounds, or the sale of BB or pellet guns to minors, would in our view likewise support characterizing pellet guns as dangerous weapons as that term is used in section 12022, subdivision (b).

The legislative history related to the 1993 amendment of section 626.10 (the statute at issue in *Arturo H.*), which added to its subdivision (a) the prohibition of “any instrument that expels a metallic projectile such as a BB or a pellet . . . or any spot marker gun” on school grounds (Stats. 1993, ch. 599, § 2), reflects these policy considerations. The amendment was introduced as Senate Bill No. 647. Its accompanying analysis states that “[t]he purpose of this measure is to prevent the introduction of weapon-like instruments on the campuses of public elementary and high schools because of their capacity for creating disruption, apprehension, [and] physical injury . . . BB guns . . . have an inherent capacity for physical injury. . . .” (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 647 (1993-1994 Reg. Sess., as amended Apr. 28, 1994.)) These statutes proscribing pellet guns on school campuses, as well as the sale of pellet guns to minors, reflect a legislative recognition that the inherently dangerous nature of these instruments justifies the imposition of criminal penalties.

Considering the two classes of “dangerous weapons or deadly weapons” articulated by our Supreme Court in *Graham* (*People v. Graham, supra*, 71 Cal.2d at p. 327), we conclude a pellet gun falls into the first. It is a weapon in the strict sense of the word. We are convinced that a pellet gun is a dangerous weapon under section 12022, subdivision (b), as a matter of law because it is dangerous to others in the ordinary use for which it was designed. Unlike a toy gun, which is designed for play and is incapable of

shooting a projectile, or a starter pistol, which is not designed to release a projectile but to make a loud noise to signal the beginning of a race, a BB gun is not an imitation gun. It is an instrument designed to shoot by expelling a metal projectile at a target, is commonly recognized as such, and thus, as *Arturo H.* observes, is reasonably perceived as capable of inflicting serious injury. (*In re Arturo H., supra*, 42 Cal.App.4th at p. 1698.)³ Indeed, the victim here perceived the instrumentality as “a semiautomatic handgun.” He testified he was certain it was a handgun, that it was semiautomatic and not a revolver. It was without question a real gun. And, in fact its appearance provoked the desired reaction: submission to appellant’s criminal enterprise and demands. In short, the BB gun wielded by appellant was by design a weapon, and its use to expel a projectile supports the section 12022, subdivision (b) enhancement, even in the absence of evidence of its capacity to be used in a dangerous manner.

Appellant argues there was insufficient evidence that the BB gun used in this case was capable of inflicting great bodily injury. The gun was introduced into evidence. Markings on the gun included its caliber, “BB Cal (4.5mm) .177/Cal.,” and model name, “Marksman Repeater.” No evidence was presented regarding the velocity with which the BBs could be expelled from the gun, the material or shape of the BBs used in the gun, or the velocity necessary for a BB, in general, to produce injury. Relying primarily on *People v. Lochtefeld* (2000) 77 Cal.App.4th 533 (*Lochtefeld*), appellant argues that without such evidence the capacity of this particular gun to injure could not be determined.

³ Appellant was alleged, in the alternative, to have used a firearm (§ 12022.53, subd. (b)) or a dangerous or deadly weapon (§ 12022, subd. (b)). During closing argument his attorney argued there was “no deadly weapon was found on [appellant] . . . or on [his] premises. What was seized was a BB gun, which certainly doesn’t fall within the statute for a deadly weapon.” The prosecutor agreed there was insufficient evidence of firearm use for purposes of section 12022.53, subdivision (b), but argued that a true finding under section 12022, subdivision (b), “doesn’t require a firearm. It could be any weapon. It could be a rock, it could be a bat, it could be a BB gun. A BB gun would qualify as a deadly or dangerous weapon.” Appellant’s counsel made no attempt to rebut this prosecution argument.

In *Lochtefeld*, the defendant was convicted of section 245, subdivision (c): assault on a peace officer “*with a deadly weapon or instrument, other than a firearm.*” (*Lochtefeld, supra*, 77 Cal.App.4th at p. 535, italics in original.) After noting the expert trial testimony that the pellet gun at issue could expel pellets at sufficient speed to penetrate muscle tissue or an eyeball from a significant distance, *Lochtefeld* concluded the jury was entitled to find, on that evidence, that the gun was a weapon capable of inflicting great bodily injury. Therefore, *Lochtefeld* held, it was a deadly weapon for purposes of section 245 as a matter of law. (*Lochtefeld, supra*, at p. 541.)

Lochtefeld does not assist appellant. First, it emphasizes at the outset that a pellet gun has been found to be a deadly or dangerous weapon in the context of other penal statutes, specifically section 12022, subdivision (b), and in no way implies criticism of such a finding. (*Lochtefeld, supra*, 77 Cal.App.4th at p. 535.) Second, it does not establish an evidentiary threshold for proof of a weapon’s capability to injure. In any case, evidence of the *Lochtefeld* weapon’s capabilities was of greater significance in that case because, under section 245, there must be a finding the weapon was “deadly,” not, as under section 12022, subdivision (b), “deadly *or* dangerous.”

Additionally, *Lochtefeld* had to determine, for purposes of conviction of section 245, whether the pellet gun had a *present* ability to injure, which, under section 245, means it was operable. (*Lochtefeld, supra*, 77 Cal.App.4th at pp. 541-542.) A “true” finding under section 12022 does not require that the weapon necessarily operated. (See *People v. Nelums* (1982) 31 Cal.3d 355, 357.)

II. *Custody Credits*

Appellant contends he is entitled to 328 days of predisposition custody credits against the maximum term of confinement. He bases his calculation on time spent in custody on prior petitions and warrants. Respondent agrees the juvenile court miscalculated the number of days to which appellant was entitled, but argues he is entitled to 157 days of custody credit.

a. Instant offense

A minor is entitled to credit against his maximum term of confinement for the time spent in custody before the disposition hearing. (§ 2900.5, subd. (a); *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) The instant offense occurred and appellant was arrested on March 27, 2004, although he was not booked until March 28, 2004. The dispositional hearing was May 4, 2004. Pursuant to the probation officer's calculation in the predisposition report, the court awarded appellant 38 days of precustody credit: March 28-May 4. Respondent concedes, and we agree, that appellant is also entitled to a day of custody credit for March 27, the date of his arrest.

b. Prior offenses

Appellant's six-year, ten-month term of commitment to CYA was based not only on the instant offense—robbery with use of a deadly or dangerous weapon (six years)—but on three prior misdemeanors found on three earlier petitions adjudging him a ward within Welfare and Institutions Code section 602 (collectively, 10 months: 1/3 the midterm of each offense). If a juvenile court elects to aggregate a minor's period of physical confinement on multiple petitions, including previously sustained petitions, the maximum term of imprisonment shall be the aggregate term of imprisonment specified in section 1170.1. (Welf. & Inst. Code, § 726, subd. (c) (hereafter section 726).) Pursuant to section 1170.1, when a person is convicted in the same or different proceedings, the aggregate term of imprisonment for all convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed.

When a juvenile court aggregates a minor's period of physical confinement on multiple petitions pursuant to the above statutory provisions, it must also aggregate the predisposition custody credits attributable to the multiple petitions. (*In re Emilio C.*, *supra*, 116 Cal.App.4th at p. 1067, citing *In re Eric J.* (1979) 25 Cal.3d 522.) Here, the juvenile court awarded appellant custody credit only for the period between his booking and the disposition on the instant petition, not for any time spent in custody pursuant to the three previous petitions that resulted in the 10 months added to the 6 years on the present offense. Respondent does not dispute that appellant is entitled to 157 days of

credit for time spent in juvenile hall on those three previous petitions. Relying on section 726, subdivision (c), respondent argues appellant is not additionally entitled to 133 days of custody credit for the time spent under home supervision at his mother's house as a "juvenile hall detainee," contrary to appellant's contention that he is so entitled.

Section 726, subdivision (c), states, in pertinent part: "If the minor is removed from the physical custody of his or her parent or guardian as the result of a [section 602 criminal offender] wardship . . . the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." As used in section 726, subdivision (c), "[p]hysical confinement' means placement in a juvenile hall, ranch, camp, forestry camp or *secure juvenile home* pursuant to [Welf. & Inst. Code] Section 730, or in any institution operated by the Youth Authority." (Italics added.)

Welfare and Institutions Code section 730 (hereafter section 730) states that when a minor is adjudged a ward of the court under Welfare and Institutions Code section 602 (hereafter section 602), the court may commit the minor to a juvenile home, ranch, camp, or forestry camp, or, if none of these exists in the county, to the county juvenile hall, or, alternatively, may order any of the types of treatment referred to in Welfare and Institutions Code section 727 (hereafter section 727).

Section 727 authorizes the court to order the care, custody and control of both section 602 and 601 (habitual truants) wards to be under the supervision of the probation officer who may place the minor with a relative, suitable licensed community care facility, or foster family. As *In re Randy J.* (1994) 22 Cal.App.4th 1497, 1502 observes, the placements enumerated under section 727 cannot be "secure" facilities because they may be used for section 601 wards, who, if detained, shall be detained "in a nonsecure facility provided for in . . . Section 727."

Like appellant in this case, the defendant in *Randy J.*, argued that he was entitled to pre-CYA commitment custody credits for the days he spent in "house arrest," and at two nonsecure residential placements. (*In re Randy J., supra*, 22 Cal.App.4th at p. 1500.)

Randy J. concluded that under the plain language of section 726, appellant was not so entitled. “Section 726 specifically defines ‘physical confinement’ as excluding time not spent in a secure facility. . . . We are not empowered to ignore this clear and unambiguous definition absent some constitutional shortcoming. Since none of the facilities for which [the defendant] seeks credit were ‘secure,’ he is not entitled to credit. [¶] [T]he Legislature specifically *included* language limiting the definition of physical confinement to *secure* juvenile-home placements pursuant to section 730; had the Legislature meant to include all juvenile placements for section 602 wards pursuant to section 730, including the section 727 nonsecure-placement option made available by section 730, it would not have used the restrictive language that we are not free to disregard. [¶][¶] The plain language of section 726 does not include nonsecure placements, so the [defendant] is not entitled to credit for home custody or the placements at” the nonsecure facilities. (*In re Randy J., supra*, 22 Cal.App.4th at pp. 1505-1506.)

We agree with *Randy J.*’s statutory analysis. Consequently, whatever restrictions the juvenile court may have imposed on appellant’s activities while he was a section 602 ward placed at his mother’s house, e.g., electronic monitoring, curfews, etc., his placement did not constitute “physical confinement” in a “secure juvenile home,” and he is not entitled to custody credits for the days spent in such placement.

DISPOSITION

The orders sustaining the petition and committing appellant to CYA are affirmed. The case is remanded to the juvenile court with directions to (1) calculate the amount of precommitment custody credit to which appellant is entitled; (2) prepare an amended commitment order reflecting such credit; and (3) forward a certified copy of the amended commitment order to CYA or, if applicable, appellant’s alternate placement.

Jones, P.J.

We concur:

Simons, J.

Gemello, J.

A106781

Trial court: Alameda County Superior Court

Trial judge: Hon. Delbert Gee

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