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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAFAYETTE BRATON CADE,

Defendant and Appellant.

B277730

(Los Angeles County  
Super. Ct. No. GA082499)

APPEAL from a judgment of the Superior Court of Los Angeles County, Darrell S. Mavis, Judge. Affirmed in part; reversed and vacated in part, with directions.

Sally Patrone Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior

Assistant Attorney General, Susan Sullivan Pithey and Elaine F. Tumonis, Deputy Attorneys General, for Plaintiff and Respondent.

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## I. INTRODUCTION

On February 14, 2011, defendant Lafayette Braton Cade hit Joe Kakish several times with a hammer. A jury convicted defendant of assault with a deadly weapon (count 1) and assault by means likely to produce great bodily injury (count 2). (Pen. Code,<sup>1</sup> former § 245, subd. (a)(1).) The trial court sentenced defendant on each count, but stayed the count 2 sentence pursuant to section 654.<sup>2</sup> We hold

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<sup>1</sup> Further statutory references are to the Penal Code except where otherwise noted.

<sup>2</sup> The jury further found as to each count defendant personally inflicted great bodily injury on the victim. (§ 12022.7, subd. (a).) At sentencing, however, the trial court struck those enhancement allegations. The trial court found defendant had three prior convictions within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i); 1170.12) and section 667, subdivision (a)(1). The trial court sentenced defendant to 25 years to life plus 15 years on each count but, as noted above, stayed the count 2 sentence under section 654. The trial court orally imposed a \$300 restitution fine (§ 1202.4, subd. (b)), a \$300 parole revocation restitution fine (§ 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373,

defendant could not be convicted of two counts of aggravated assault under former section 245 because the statute set forth two means of committing a single offense and, under section 954, multiple convictions for different statements of the same offense are not permitted. We reverse and vacate the judgment and sentence, imposed but stayed, on count 2. We direct the clerk of the superior court to amend defendant's abstract of judgment.

## II. DISCUSSION

### *A. Defendant's Count 2 Conviction Must be Reversed and Vacated*

When defendant committed the aggravated assault, former section 245, subdivision (a)(1) provided: "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished . . . ." (Stats. 2004, ch. 494, § 1, p. 4040.)<sup>3</sup> Former

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subd. (a)(1)). However, the abstract of judgment reflects an \$80 court security fee and a \$60 criminal conviction assessment.

<sup>3</sup> Effective January 1, 2012, subdivision (a)(1) was divided into two subdivisions. Subdivision (a)(1) prohibits assault with a deadly weapon or instrument other than a firearm. Subdivision (a)(4) prohibits assault by means of

section 245, subdivision (a)(1) set forth two different ways of committing a single offense, aggravated assault—either with a deadly weapon or by means likely to produce great bodily injury; former section 245, subdivision (a)(1) did not describe two distinct offenses. (*People v. Landry* (2016) 2 Cal.5th 52, 128-129; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1036-1037; *In re Mosley* (1970) 1 Cal.3d 913, 919, fn. 5; *People v. McGee* (1993) 15 Cal.App.4th 107, 114-115.) Further, pursuant to section 954, multiple convictions for different statements of the same offense are not permitted. (*People v. Vidana* (2016) 1 Cal.5th 632, 647, 650, 651.) Therefore, the judgment on count 2, together with the sentence imposed but stayed, must be reversed and vacated. The abstract of judgment must be amended to so reflect.

*B. There was Substantial Evidence Defendant Did Not Act in Self-Defense*

At trial, defendant denied attacking Kakish. Defendant testified he responded in self-defense after Kakish attacked *him*. On appeal, defendant argues the prosecution failed to prove beyond a reasonable doubt that he did not act in self-defense. To that end, the jury was properly instructed that to find defendant guilty of aggravated assault, the People had to prove, among other things, “The defendant did not act in self-defense.” (*People v.*

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force likely to produce great bodily injury. (Stats. 2011, ch. 183, § 1.)

*Adrian* (1982) 135 Cal.App.3d 335, 336, 340-341; see Bench Notes, CALCRIM No. 875, Instructional Duty [“If there is sufficient evidence of self-defense . . . [g]ive the bracketed element 4 . . . .”].)

In reviewing a challenge to the sufficiency of the evidence, we apply the following standard of review. “[W]e must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) We neither reweigh the evidence nor reevaluate the credibility of witnesses. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. (*Ibid.*) If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. (*Ibid.*)” (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639; accord, *People v. Hubbard* (2016) 63 Cal.4th 378, 392.)

Viewed in the light most favorable to the judgment, there was substantial evidence defendant did not act in self-

defense. Kakish, the victim, testified the assault was unprovoked. Kakish and defendant had been talking amicably. Kakish began to walk away. Defendant attacked him from behind, striking him with a hammer. Kakish ran but defendant followed him. Defendant hit Kakish again, knocking him to the ground. Defendant stood over Kakish and repeatedly struck him with the hammer. When the assault ended, defendant fled.

Kakish's testimony was corroborated by an eyewitness. The eyewitness told an investigating detective she heard screaming in the hallway. When she opened her door, she saw Kakish on his back on the ground. Defendant was standing over Kakish holding a hammer. Defendant struck Kakish in the head with the hammer three or four times.

Kakish's testimony was also corroborated by surveillance videotape shown to the jury. The videotape showed defendant chasing Kakish down a hallway, attacking him with a hammer, Kakish falling to the ground, and defendant standing over him continuing the assault. The foregoing was substantial evidence defendant did not act in self-defense.

Defendant points out that Kakish was larger, taller, younger and stronger; and Kakish's testimony was incoherent and inconsistent, and his credibility was suspect. All of these claims appear to be true; however, whether to believe Kakish's account of the attack was for the jurors to determine. We cannot substitute our judgment for theirs.

(*People v. Jennings, supra*, 50 Cal.4th at pp. 638-639; *People v. Lindberg, supra*, 45 Cal.4th at p. 27.)

### III. DISPOSITION

The judgment on count 2, together with the sentence imposed but stayed, is reversed and vacated. The judgment is affirmed in all other respects. The abstract of judgment must be amended to delete the reference to and sentence imposed on count 2 including the three stayed Penal Code section 667, subdivision (a)(1) enhancements and to reflect a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373, subd. (a)(1)). On remand, the clerk of the superior court is to prepare an amended abstract of judgment and deliver a copy to the Department of Corrections and Rehabilitation.

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LANDIN, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.