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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN GABRIEL TRINIDAD,

Defendant and Appellant.

B281203

(Los Angeles County  
Super. Ct. No. BA347246)

APPEAL from an order of the Superior Court of Los Angeles County. William C. Ryan, Judge. Reversed and remanded.

Jonathan B. Steiner, Executive Director and Kevin E. Lerman, Staff Attorney, 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, Assistant Attorney General, Noah P. Hill and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

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A Los Angeles County jury found defendant and appellant Juan Gabriel Trinidad guilty of assault with a deadly weapon (count 1; Pen. Code, § 245, subd. (a)(1)),<sup>1</sup> resisting an executive officer (count 2; § 69), and custodial possession of a weapon (count 3; § 4502, subd. (a)). The trial court sentenced him to consecutive terms of 25 years to life on each count, for a total of 75 years to life. He was granted 507 days of custody credits; various fines and fees were imposed.

Defendant appealed. On July 11, 2011, we affirmed the judgment, finding that, among other things, defendant's three convictions could be separately punished pursuant to section 654. (*People v. Sanchez* (July 11, 2011, B221712) [nonpub. opn.] (*Sanchez*).)

After the enactment of Proposition 36, defendant filed a petition for recall of sentence pursuant to section 1170.126. On December 8, 2014, the trial court denied the petition, finding that assault with a deadly weapon (count 1) is a serious felony, disqualifying defendant from resentencing on all counts. Defendant appealed, and on August 7, 2015, this court reversed, finding that defendant was eligible for recall of sentence and resentencing on count 2 even though count 1 was a serious felony. (*People v. Trinidad* (Aug. 7, 2015, B261072) [nonpub. opn.], at p. 4 (*Trinidad I*)). On remand, the trial court ordered the prosecution to show why defendant's petition should not be granted as to counts 2 and 3.

After a hearing, the trial court denied defendant's petition on the grounds that defendant intended to cause great bodily

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

injury when he threw heavy and dangerous pieces of porcelain at deputies and he was armed with a deadly weapon, i.e., heavy and sharp chunks of porcelain. Defendant timely filed a notice of appeal. He argues, inter alia, that under the doctrine of the law of the case, this court's finding in the first appeal (*Sanchez*) that defendant's count 2 offense was separate from the charged assault (count 1) precludes the recall court's finding that the two offenses consisted of the same course of conduct and comprised an indivisible transaction.

We agree with defendant that the doctrine of law of the case applies. The trial court's finding that counts 1 and 2 consisted of the same course of conduct is precluded by our determination in *Sanchez* that the offenses were separate and divisible and thus properly subject to separate sentences (and not subject to § 654). Thus, the matter must be remanded for rehearing for the recall court to decide whether resentencing defendant would pose an unreasonable risk of danger to public safety. (§ 1170.126, subds. (f) & (g).)

### **FACTUAL BACKGROUND<sup>2</sup>**

On August 25, 2008, defendant was a prisoner in the Los Angeles Men's Central Jail. He was imprisoned on the 3100A row, which contained 26 single-occupancy cells. During a mass disturbance, prisoners in the row threw trash and debris everywhere, including some pieces of porcelain on the floor of the row.

In an effort to quell the disturbance, the jail guards, Los Angeles County Sheriff's deputies and sergeants, marched through the row to extract prisoners one by one. As the guards

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<sup>2</sup> The summary of facts comes from our July 11, 2011, opinion. (*Sanchez, supra*, B221712, pp. 3–9.)

advanced, their leader repeatedly commanded prisoners to “[g]o to the back of the cell. Face the back. Put your hands behind your back.” Then the guards would handcuff the prisoners and escort them out.

When the guards first arrived, most of the inmates were uncooperative, throwing items and making a lot of noise. Defendant had broken his porcelain sink and chunks of porcelain were inside his cell.

Soon after their arrival, the guards began shooting rubber bullets at any prisoners’ hands that were sticking out of their cells. When the guards started shooting, most prisoners immediately retreated to the back of their cells. Defendant, however, did not immediately retreat. One of the guards saw him throw porcelain at the guards. The guards shot at defendant’s hand. One of the guards was hit in the right upper thigh with a piece of porcelain that defendant threw.

When the guards arrived at defendant’s cell defendant had retreated to the rear of the cell, where he was holding up his mattress to block the guards’ weapons. Defendant was extracted and removed from his cell after putting up a struggle.

### **PROCEDURAL BACKGROUND**

In accordance with our direction in *Trinidad I*, the trial court held a hearing on defendant’s petition for recall of sentence. In response to his petition, the People argued that because the thrown porcelain chunks “were used as deadly weapons,” defendant, under *People v. Bland* (1995) 10 Cal.4th 991, 997, was armed with them during the commission of all counts. Similarly, the People asserted that defendant’s intent in connection with count 1 could support an ineligibility finding as to counts 2 and 3.

Later, the prosecutor described count 2 as being based on “not just the extraction of [defendant] from his cell, but rather was the continuous course of conduct” that involved disobeying guard commands and continuing to throw porcelain pieces until guards “forcefully extract[ed] him from his cell.” After all, defendant’s section 69 offense involved “a continuous course of conduct” from the start of the jail riots to his forced removal from the cell. In support, the prosecutor relied upon testimony indicating that defendant’s resistance included throwing of porcelain.

### DISCUSSION

Proposition 36, the Three Strikes Reform Act of 2012, “created a postconviction release proceeding whereby a prisoner who is serving an indeterminate life sentence imposed pursuant to the [T]hree [S]trikes law for a crime that is not a serious or violent felony and who is not disqualified, may have his or her sentence recalled and be sentenced as a second strike offender unless the court determines that resentencing would pose an unreasonable risk of danger to public safety. (§ 1170.126.)” (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 168; *People v. Johnson* (2015) 61 Cal.4th 674, 682.) An inmate currently serving an indeterminate life sentence pursuant to the Three Strikes law is disqualified from resentencing if he has an enumerated disqualifying factor set forth in section 1170.126, subdivision (e). (*People v. Hicks* (2014) 231 Cal.App.4th 275, 282.)

One of the disqualifying factors is if, “during the commission of the current offense, the defendant . . . was armed with a firearm or deadly weapon.” (§§ 667, subd. (e)(2)(C)(iii) & 1170.12, subd. (c)(2)(C)(iii).) A defendant is also ineligible for

resentencing if, “[d]uring the commission of the current offense, [he] . . . intended to cause great bodily injury to another person.” (§§ 667, subd. (e)(2)(C)(iii) & 1170.12, subd. (c)(2)(C)(iii).)

The recall court denied defendant’s petition for resentencing on the grounds that defendant was armed with a deadly weapon (porcelain chunks) and intended to cause great bodily injury to the jail guards by throwing those porcelain chunks at them. Defendant challenges these findings on the grounds that they are barred by our holding in *Sanchez*, thereby violating the doctrine of law of the case. As pointed out by defendant in his reply brief, the People do not respond to this argument in their respondent’s brief.

We agree with defendant that the recall court was bound by our determination that his count 2 offense (resisting an officer) was “separate from the assault[] committed by throwing porcelain at the deputies.” “Under the doctrine of the law of the case, a principle or rule that a reviewing court states in an opinion and that is necessary to the reviewing court’s decision must be applied throughout all later proceedings in the same case, both in the trial court and on a later appeal.” (*People v. Jurado* (2006) 38 Cal.4th 72, 94.) ““Thus the law-of-the-case doctrine “prevents the parties from seeking . . . reconsideration of an already decided issue in the same case absent some significant change in circumstances.” [Citation.]”” (*People v. Sons* (2008) 164 Cal.App.4th 90, 98–99.)

In our prior opinion, we determined that defendant’s consecutive sentences did not violate section 654 because his convictions were based upon “separate acts that constituted resisting inside [defendant’s] cell.” It follows that the recall court’s finding that defendant was armed based on his throwing

porcelain violates the doctrine of law of the case; reversal is required.

That said, the proper remedy is to remand the matter to the trial court so that it can determine whether resentencing defendant would pose an unreasonable risk of danger under section 1170.126, subdivisions (f) <sup>3</sup> and (g). The trial court never made this determination and, upon remand, it shall do so.

### **DISPOSITION**

The order is reversed and the matter is remanded to the superior court to determine whether to grant defendant's petition for recall of sentence and resentencing on count 2.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT

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<sup>3</sup> Section 1170.126, subdivision (f), provides, in relevant part: "If the petitioner satisfies the criteria in subdivision (e), the petitioner shall be resentenced . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety."