Filed 5/4/18 P. v. Hollis CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CHAUNCEY ALEXANDER HOLLIS,<br><br>Defendant and Appellant. | B276667<br><br>Los Angeles County Super. Ct. No. LA078996 |

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard H. Kirschner, Judge. Affirmed and remanded with directions.

Rachel Lederman, 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, and Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Chauncey Alexander Hollis of one count of leaving the scene of an accident that resulted in permanent, serious injury and two counts of reckless driving causing great bodily injury. The jury found true allegations that Hollis had a prior conviction for reckless driving and that he personally inflicted great bodily injury on the victims in the commission of the crimes. The jury also found two prison priors true. The trial court sentenced Hollis to 12 years and four months in the state prison.

The sole contention raised by Hollis's counsel on appeal[1] is that the trial court erred in granting Hollis's *Faretta*[2] motion to represent himself because it did not tell him the maximum possible sentence if he were convicted. We find no error and therefore affirm Hollis's conviction. We remand the case for the trial court to strike the great bodily injury enhancements on Counts 2 and 3.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *The charges and pretrial proceedings*

In 2014 the People charged Hollis with leaving the scene of an accident that caused permanent, serious injury to another person in violation of Vehicle Code section 20001,

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[1] Hollis, acting in propia persona, has filed two petitions for writs of habeas corpus. We previously denied his February 2018 writ petition. We address Hollis's August 2016 writ petition in a separate order filed concurrently with this opinion.

[2] *Faretta v. California* (1975) 422 U.S. 806 [95 S.Ct. 2525, 45 L.Ed. 562] (*Faretta*).

subdivision (a).[3] The People also charged Hollis with two counts of reckless driving causing great bodily injury to Randy Douglas Gluck and Kelley Jean O'Connor in violation of Vehicle Code section 23104, subdivision (b). The People alleged Hollis had a prior conviction for reckless driving. The People also alleged, as to each count, that Hollis had personally caused great bodily injury to O'Connor and Gluck within the meaning of Penal Code section 12022.7, subdivisions (a) and (b) respectively. Finally, the People alleged Hollis had two prison priors under Penal Code section 667.5, subdivision (b).

Hollis was apprehended in Illinois on a warrant and extradited to California.

Hollis's preliminary hearing was set for January 29, 2015. When counsel arrived in the courtroom, Hollis's privately-retained attorney told the judge Hollis was "seeking to have [him] terminated as counsel." The court responded that seven witnesses were in court, waiting to testify. The court denied Hollis's request to fire his lawyer (and, presumably, postpone the preliminary hearing), noting that Hollis could replace his attorney for any further proceedings if he were held to answer.

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[3] The information alleged in Count 1 the crime of leaving the scene of "an accident resulting in permanent, serious injury to a person other than himself." This is the language of Vehicle Code section 20001, subdivision (b)(2). But the information alleged a violation of Vehicle Code section 20001, subdivision (a). Whether or not this was a typographical error, the People later moved to amend Count 1 to conform to proof and to allege Hollis violated Vehicle Code section 20001, subdivision (b)(2), rather than section 20001, subdivision (a).

The court held Hollis to answer and he was arraigned on February 18, 2015. Hagop Kuyumjian of Geragos & Geragos appeared as Hollis's counsel. Approximately 11 pretrial conferences followed, from March 2015 to January 2016. On January 5, 2016, the parties appeared for another pretrial conference. The court ordered some witnesses on call and dealt with a bail issue. Hollis's attorney moved to postpone the trial for several weeks. The prosecutor then told the court the People's offer was eight years in the state prison (with a waiver by Hollis of any custody credits he had accumulated).[4] This exchange followed:

THE COURT: What's the maximum possible sentence in this matter?
[THE PROSECUTOR]: I would have to calculate, Your Honor, but I think it's something in the range of 15 years.
[DEFENSE COUNSEL]: I thought it was in the range of 13 years, Your Honor. But it's --
[THE PROSECUTOR]: Could be.
[DEFENSE COUNSEL]: I could be wrong as well.
[Pause in proceeding]
[THE PROSECUTOR]: 14 years, four months. Anyway, between 10 years, Your Honor, and 15 years is where we're at. There [are] one-year priors. There [are] G.B.I. allegations. There is a G.B.I. allegation of causing a coma, which is an enhancement, a five-year G.B.I. It depends on what the judge does. [¶] But he will

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[4] Hollis had been out on bail for most of 2015. Because of an issue with his bail bond company, the court remanded him on January 5, 2016.

get high term, I believe, and full consecutive. It will probably be around 10 to 15 years.

THE COURT: Let's not put the cart before the horse. [¶] The reason I asked the prosecution, Mr. Hollis, is that I want you to be here so that you have an absolute understanding as to what the potentials are in this case. And I urge you, absolutely urge you, to listen to your lawyer and to make a decision that you believe is in your best interest. . . . [¶] And, again, you actually have two lawyers here today. Listen carefully to what they have to say. . . . You have a lot at stake here. Look at it very, very carefully and make a judgment call that makes sense for you, in consultation with your lawyers."

2. *Hollis's demand to represent himself*

The parties appeared again before the court for a final readiness conference (a so-called zero of 10 date) on January 26, 2016. We have no reporter's transcript of the proceedings on that date. The docket states, "The court and counsel confer regarding the defendant's potential pro per status. The court finds the defendant does not pro per status [sic]." The docket states Hollis said he did not want Kuyumjian to continue to represent him, nor did he want Mark Geragos. The docket states Hollis "request[ed] a continuance to retain private counsel" but at the same time "refuse[d] to waive time." Accordingly, the trial court ordered Geragos to remain counsel of record and trailed the case to February 1, 2016.

Two days later, on January 28, 2016, the trial court advanced the matter at defense counsel's request. The parties appeared before the court and Hollis completed, initialed, signed, and filed an "Advisement and Waiver of Right To Counsel (*Faretta* Waiver)." The form listed 13 "dangers and

disadvantages of self-representation" as well as seven acknowledgements of what Hollis was giving up by choosing to represent himself. The form noted the court's "advice and recommendation" that Hollis not act as his own attorney. Hollis initialed each box on the form. Above the signature line, Hollis wrote in, "All statutory & constal [sic] rights reserved." Hollis signed the form, then wrote "without prejudice."

The trial court questioned Hollis about his *Faretta* request. Regarding Hollis's "without prejudice" notation, the court said, "You are, in my judgment, prejudicing yourself by representing yourself. There are many pitfalls out there." The court continued, "[I]t is my belief that you will be harming yourself. It is a bad idea to represent yourself. [¶] So I want to be sure that you understand that. I'm going to ask you more questions about that." Hollis responded, "I understand." The court's colloquy with Hollis continued for some time. Eventually the court said, "Now, you've carefully looked at the form, reviewed the form, and I believe you've probably discussed it with your lawyer; is that correct?" Hollis answered, "Yes." The court went on to reiterate the warnings and advisements Hollis already had initialed, including his right to appointed counsel at no cost and the fact that he would face an experienced prosecutor and would not receive any special treatment. The court told Hollis, "There are many dangers and disadvantages to self-representation. First of all, you're going to be too involved or may be too involved to make the right decisions because you're too involved. You're not objective." The court also cautioned Hollis that he could lose his right to represent himself if he "deliberately engage[d] in serious and obstructionist conduct." Hollis said he understood. The court asked Hollis if he had any questions and Hollis said, "No."

The court then asked, "You still want to represent yourself?" Hollis answered, "Yes, sir." The court then granted Hollis's motion.

The court continued the case at Hollis's request and appointed an investigator for him.

3. *The trial*

After five more pretrial conferences, the case finally went to trial in late April 2016. The court appointed stand-by counsel. We do not have a reporter's transcript for proceedings on April 25, 2016, but the docket states Hollis said he did "not consent to trial" nor did he wish to have stand-by counsel represent him or assist him during jury selection. On April 26, before the prospective jurors entered the courtroom, the court asked Hollis if he had a witness list and if he wished to wear civilian clothing rather than his jail uniform. Hollis refused to respond, stating repeatedly, "I don't agree, and I don't consent to a trial." The court again asked Hollis, "Do you wish to have a lawyer appointed for you to represent you at this point? Do you wish to relinquish your pro per status?" Hollis answered, "No."

As the sufficiency of the evidence is not at issue in this appeal, we summarize it briefly: Kelley O'Connor picked up her friend Randy Gluck on the evening of July 13, 2014 in her Honda CR-V. They left a yogurt shop around 9:15 or 9:30 p.m. and were driving north on the 101 freeway toward O'Connor's home. Both O'Connor, the driver, and Gluck, the front passenger, were wearing seat belts. O'Connor drove past Universal Studios. That is the last thing she remembers before waking up in the hospital.

Nicholas Sacks also was driving north and west on the 101 that night. Sacks was going about 70 miles per hour in the number two lane. A black BMW sped past him going "at least

double [that] speed." The BMW was "weaving in and out of traffic," "moving way too fast." Sacks did not see any car chasing or following the BMW. The BMW changed lanes and collided with the rear bumper of O'Connor's Honda CR-V. The Honda "flipped a few times and then shot debris everywhere." The BMW "veered to the right and hit the guardrail." Investigating officers later determined O'Connor's Honda had rolled about 290 feet after it was hit.

Sacks pulled to the side of the freeway. He saw an African American man running; the man jumped over the guardrail. Sacks looked into the BMW but no one was in the car. Paramedics and police arrived within about 10 or 15 minutes.

Curtis Thompson was working that night at Castle Park, a miniature golf and game arcade near the freeway. Thompson heard "cars crashing." A few minutes later, Thompson saw an African American man coming over a wall into the Castle Park parking lot. The man fell over and landed on his back. Thompson approached and asked the man if he was alright. The man said he was fine, jumped up, and "ran straight through Castle Park all the way to the rear of the building." Thompson followed the man through the complex, "out of the rear of the building," and through the golf course. The man then jumped over a barbed-wire-topped fence. At trial, Thompson identified Hollis as the man he had seen that night. Castle Park surveillance video also showed Hollis walking through the arcade toward the golf course.

Department of Motor Vehicles records showed that Hollis bought a 7-series BMW in 2009 and that he was still its registered owner in July 2014. According to the DMV, Hollis's car's license plate number was 6RNS925. The BMW that hit the

Honda on the night of July 13, 2014 had that same license plate. DNA testing of blood on the armrest of the driver's side door as well as the air bag of the BMW matched a swab taken from Hollis. California Highway Patrol officer Jeffrey Wadsworth testified the condition of the seat belts and air bags in the BMW showed the driver was the only occupant at the time of the collision.

O'Connor stayed in the hospital for about nine days. She had a fractured skull, a fractured clavicle, and fractured ribs. O'Connor "had to have [her] clavicle put back together with a metal plate so it would grow back together." She had stitches for a laceration than ran about five inches down her scalp behind her right ear. Her left hand also was badly injured. Nearly two years after the collision, O'Connor still suffered pain, dizziness, and memory loss on "an everyday basis."

The collision left Gluck in a persistent vegetative state. Doctors had to remove part of his skull and brain. Nearly 22 months after the collision, Gluck remained in a subacute facility that cares for patients who need aggressive pulmonary care. Unable to breathe on his own, Gluck was connected to a breathing machine. He had no quality of life and his physician did not expect him to improve.

Hollis testified at his trial. He said the BMW belonged to his son. Hollis testified that a woman named Meisha Libine was driving, someone named Jennifer was in the front passenger seat, and Hollis was in the back seat. Hollis said "some thirsty people" who had seen him "handling large amounts of cash" were following him, chasing the BMW and shooting at it. According to Hollis, the Honda made an unsafe lane change that caused the collision. Hollis testified he was not wearing a seatbelt and upon

impact "basically flew into the front seat." Hollis denied knowing anyone in the Honda was injured; he said he "didn't even see the Honda, period." Hollis testified he and the two women "immediately got out," "jumped over the edge," and "slid down the hill between the trees." Hollis told the jury he did not "even remember running through that arcade," that he did not know if he "blacked out or whatever." Hollis and Libine eventually found one another and got a ride to Pasadena with an unknown motorist who asked if they needed help.

Hollis also called Jeffrey Kolody as a witness. Hollis and Kolody had been housed in the same dormitory at the county jail. Hollis and Kolody denied knowing each other but Hollis admitted Kolody appeared as a "friend" on Hollis's Facebook account. Hollis testified he had posted on Facebook asking if anyone had information about the collision. Kolody testified he saw the post and called Hollis's investigator. Kolody told the jury he was on the 101 freeway on his motorcycle that night and saw a white or tan car trying to change lanes. Then, Kolody said, a car hit the tan or white car. Kolody stopped his motorcycle. He testified he saw three people climb out of the driver's door of the second car. Kolody said he saw "a girl in the driver's seat."

At the conclusion of the evidence, the People moved to amend Count 1 to conform to proof and to allege a violation of section 20001, subdivision (b)(2) (failure to stop at accident resulting in permanent, serious injury or death) rather than section 20001, subdivision (a) (failure to stop at accident resulting in injury or death) of the Vehicle Code. The trial court granted the motion. That amendment increased Hollis's potential maximum exposure by one year.

4. *The verdicts and sentence*

The jury convicted Hollis on all counts. The jury found true the allegations that Hollis personally inflicted great bodily injury on Gluck and O'Connor, that he previously had been convicted of reckless driving, and that he had served time in prison and not remained free of prison custody for five years before committing the crimes in this case. The trial court sentenced Hollis to 12 years and four months in the state prison, calculated as the upper term of four years on Count 1 for leaving the scene of an accident resulting in permanent, serious injury in violation of Vehicle Code section 20001, subdivision (b)(2), plus five years under Penal Code section 12022.7, subdivision (b) for the infliction of great bodily injury that caused the victim (Gluck) to become comatose due to a brain injury, plus two eight-month terms (one-third the midterm) on Counts 2 and 3, to be served consecutively, for reckless driving causing injury with a prior reckless driving conviction in violation of Vehicle Code section 23104, subdivision (b), plus the two one-year prison priors. The court imposed and stayed the great bodily injury enhancements on Counts 2 and 3.

**DISCUSSION**

Because "the Sixth Amendment grants to the accused personally the right to present a defense, a defendant possesses the right to represent himself. (*Faretta* [ ], *supra,* 442 U.S. [at p.] 819.)" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1069.) "In order to make a valid waiver of the right to counsel, a defendant 'should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open." [Citation.]' (*Faretta*, *supra*, 422 U.S. at p. 835.)" (*Koontz*, at

p. 1070.) "Our own Supreme Court instructs that '[t]he test of a valid waiver of counsel is not whether specific warnings or advisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.' (*People v. Bloom* (1989) 48 Cal.3d 1194, 1225.)" (*People v. Conners* (2008) 168 Cal.App.4th 443, 454 (*Conners*).)

On appeal, we independently " 'review the entire record—including proceedings after the purported invocation of the right to self-representation—and determine de novo whether the defendant's invocation was knowing and voluntary.' [Citation.]" (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 547; see also *People v. Doolin* (2009) 45 Cal.4th 390, 453.) " '*The burden is on the defendant* to demonstrate he did not knowingly and intelligently waive his right to counsel.' [Citation.]" (*Sullivan*, at p. 547.)

Hollis contends his waiver of his right to counsel was not knowing and intelligent because the trial court "never advised [him] of the maximum penalty he faced at trial." "[T]here is a split of authority in California as to whether the court [in addition to satisfying itself that the defendant understands the nature of the charges against him] must also specifically advise the defendant of the maximum penal consequences of conviction." (*People v. Ruffin* (2017) 12 Cal.App.5th 536, 544 (*Ruffin*). Compare *People v. Bush* (2017) 7 Cal.App.5th 457, 477 [court's failure to advise defendant of maximum potential fine did not invalidate *Faretta* waiver where court did tell defendant of possible incarceration and "record as a whole" convinced appellate court "defendant knew what he was doing in requesting self-representation, made his choice with eyes open, and would

have done the same even if the court had advised him specifically" about the fine]; *Conners*, *supra*, 168 Cal.App.4th at pp. 447–448, 454–455; *People v. Harbolt* (1988) 206 Cal.App.3d 140, 149–151 with *People v. Jackio* (2015) 236 Cal.App.4th 445, 454–455 [trial court must "advise a defendant desiring to represent himself at trial of the maximum punishment that could be imposed if the defendant is found guilty of the crimes, with enhancements, alleged at the time the defendant moves to represent himself"; advisement was sufficient].)

After the parties filed their briefs in this case, Division Four of our court decided *Ruffin*, *supra*, 12 Cal.App.5th 536. There, Justice Willhite found inadequate the lower court's inquiry of the defendant, Ruffin. The court had asked Ruffin only if the signature on the *Faretta* waiver form was his and if he had any questions. (*Id*. at pp. 539–540.) Justice Willhite noted "[t]he court did not affirmatively ascertain on the record whether [Ruffin] actually read and understood the advisements contained in the waiver form, and whether, with such understanding, [Ruffin] wished to waive his right to counsel and represent himself." (*Id*. at p. 546.) Moreover, even though Ruffin was not charged with strike offenses, because one of his two prior strikes was for forcible rape, he faced a sentence of 27 years to life. (*Id*. at p. 541, fn. 5.) The trial court did not tell him this. Justice Willhite referred to the split in California authority on this point, then stated, "We need not enter the debate whether and to what extent a trial court is required to advise of possible penal consequences, because even if such an advisement is not mandatory, its total absence is certainly a factor to consider in determining whether the defendant's waiver was knowingly made, and in this case we rely on the entire record to conclude

that the *Faretta* waiver was invalid." (*Id.* at p. 544.) Justice Collins concurred.

Presiding Justice Epstein concurred in the judgment. Justice Epstein would have affirmed Ruffin's conviction but for the absence in the record of an indication of "the maximum prison time that could be imposed." (*Ruffin*, *supra*, 12 Cal.App.5th at p. 552.) Justice Epstein noted Ruffin "initialed specific references to waiving rights some 16 times," then dated and signed a certification that he had read, considered, and understood the advisements. Justice Epstein wrote, "The court was not required to remonstrate with [Ruffin] about his choice so long as it was reasonably satisfied that [he] understood what he was giving up and the risks of self-representation." (*Ibid.*)

We too are not weighing in on the debate on "whether and to what extent a trial court is required to advise of possible penal consequences" that Justice Willhite described in *Ruffin*. In any event, the facts of our case are quite different from those in *Ruffin*. After Hollis initialed each box on the *Faretta* waiver form and signed it, the trial court engaged in a lengthy colloquy with him. As noted, the court emphasized, again and again, the risks and dangers of self-representation. The court confirmed that Hollis had "carefully . . . reviewed the form," that he had discussed it with his attorney, and that he understood it. The court reiterated that Hollis was "charged with very serious crimes" and that he had the right to appointed counsel at no charge. Hollis again confirmed he understood this. The court repeated the advisements on the form that Hollis would not receive any special treatment, that he would have to follow the rules, that he would have limited access to research materials, and that if convicted he would not be able to claim ineffective

assistance of counsel. The court told Hollis that it could not advise him on the elements of the offenses, available defenses, or appropriate trial strategy. Hollis repeatedly said he understood. The court then read to Hollis from the *Faretta* decision and warned him that the court could terminate his self-representation if he engaged in serious misconduct. Hollis said he understood, and confirmed again that he had no questions.

While the trial court did not expressly advise Hollis during that exchange of his maximum potential sentence, some three weeks earlier the court and counsel had discussed that very issue at length in Hollis's presence. At that juncture, Hollis's exposure was either 11 years, eight months or 12 years, eight months.[5] The prosecutor stated Hollis's maximum was 14 years, four months and Hollis's counsel said it was "in the range of 13 years." As noted, the trial court urged Hollis to talk with his attorneys and "[l]isten carefully to what they have to say" about any possible disposition. Moreover, at the conclusion of the *Faretta* hearing, Hollis was given his own copy of the information; as noted, that document reflected on the front page the "charge

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[5] As noted above, the information filed on February 18, 2015, alleged a violation of Vehicle Code section 20001, subdivision (a), in Count 1. The sentencing triad for that offense is 16 months, two years, or three years in the state prison. However, the "charge range" on the front of the information stated the triad to be two, three, or four years in the state prison. That is the triad for a violation of Vehicle Code section 20001, subdivision (b)(2). As noted, the People moved to amend the information to conform to proof. Whether this was a typographical error and the People meant to allege a violation of subsection (b)(2) rather than subsection (a) from the outset, the "charge range" advised Hollis that the upper term on Count 1 was four years rather than three.

range." Had Hollis had any question about this, he could have raised it at any of the subsequent five pretrial conferences or on the trial date.[6] And, as noted, the trial court asked Hollis again, as the trial was about to commence, if he wanted to give up his status and have counsel appointed. Hollis said, "No."

A case with similar facts is *Conners*, *supra*, 168 Cal.App.4th 443. There, Division Eight of our court rejected the defendant Conners's argument that "reversal [of his conviction was] required because the [court below] erred in allowing him to represent himself at trial without first advising him of the penal consequences of conviction." (*Id*. at p. 446.) The court had accepted Conners's completed waiver form and granted his *Faretta* motion without "any discussion of the maximum term Conners faced if convicted." (*Id*. at pp. 447–448.) But about two weeks later, when both sides announced ready for trial, the court and counsel—in Conners's presence—discussed whether the case was a second strike case. The court asked what the offer was, counsel told the court of the People's offer and Conners's counteroffer, and the court "then stated that 'the maximum exposure as a second strike . . . would be seven years, four months." (*Id*. at pp. 448–449.) When Conners's case was assigned to a trial court a few days later, the trial court asked Conners again if he still wanted to represent himself. Conners said, "Yes." (*Id*. at p. 449.)

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[6] Cf. *People v. Fox* (2014) 224 Cal.App.4th 424, 435 [trial court's erroneous statement to defendant that charge of assault with a deadly weapon was not a strike did not render his *Faretta* waiver invalid; defendant's former counsel had given him a copy of the accusatory pleading with charged offense].

The court of appeal stated that, even though the court had not told Conners of the potential penal penalties when it granted his *Faretta* motion, "it is clear Conners knew what they were before the trial began." (*Conners*, *supra*, 168 Cal.App.4th at p. 455.) The court said, "The overriding principle . . . remains as stated in *People v. Bloom* [citation]: the test of a valid waiver of counsel is based on the record as a whole." (*Ibid.*) The validity of Hollis's waiver is even stronger than that in *Conners*. While Conners was told of his maximum exposure *after* he had asked for and received the right to represent himself, Hollis learned of his potential exposure several weeks *before* he made his motion. Accordingly, he proceeded to file his *Faretta* motion and exercise his constitutional right to represent himself knowing full well that he faced in excess of 12 years in the state prison.

## DISPOSITION

We affirm Hollis's conviction. We remand the case for correction of Hollis's sentence. The People concede the trial court must strike the great bodily injury enhancements on Counts 2 and 3 because the infliction of great bodily injury is an element of the offense, a violation of Vehicle Code section 23104, subdivision (b). The abstract of judgment correctly does not list any enhancements for Counts 2 and 3. Accordingly, no correction to the abstract is necessary.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EGERTON, J.

We concur:

LAVIN, Acting P. J.

KALRA, 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.