Filed 5/30/17 P. v. Brooks CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JEFFREY COLE BROOKS, Defendant and Appellant.	B276940 (Los Angeles County Super. Ct. No. MA064589)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed as modified.

Mark D. Lenenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra and Kamala D. Harris, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury convicted defendant, Jeffrey Cole Brooks, of implied malice second degree murder following a fatal automobile collision caused by defendant's extreme intoxication. (Pen. Code,[1] § 187, subd. (a).) The trial court sentenced defendant to 15 years to life in state prison. We modify defendant's presentence custody credit and affirm the judgment as modified.

II. THE EVIDENCE

Viewed in the light most favorable to the verdict (see *People v. Hubbard* (2016) 63 Cal.4th 378, 392; *People v. Iniguez* (1994) 7 Cal.4th 847, 854), the circumstances of the offense were as follows. On September 26, 2014, with a blood alcohol concentration of at least .27, and traveling at no less than 88.9 miles per hour, defendant rear-ended a car stopped at a red light. It did not appear defendant used his brakes. The 21-year-old victim died on impact from a fatal skull fracture. His vehicle burst into flames.

It appeared defendant attempted to rescue the victim but intense flames prevented it. A witness, Arcadio Huerta, asked defendant for something with which to break the victim's window. Defendant responded: "That person is done for. There's no point in helping him." Defendant returned to his car and sought, unsuccessfully, to start the engine.

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[1] Further statutory references are to the Penal Code except where otherwise noted.

A person with a blood alcohol concentration of .27 is very unsafe to operate a motor vehicle. No mechanical deficiencies contributed to the accident.

Defendant had spent the night preceding the fatal accident on a party bus and at a Los Angeles club. At the end of the evening, the bus driver dispatched his passengers at a Palmdale park and ride lot. Defendant had left his car in the lot earlier in the evening, before boarding the party bus. Defendant's friend, Gary Zamberletti, knew defendant was unfit to drive and told him so. Mr. Zamberletti took defendant's car keys and advised defendant to sleep in his car. Later, however, while Mr. Zamberletti was asleep in his own vehicle, defendant retrieved his keys and drove away.

In the aftermath of the fatal collision, defendant admitted his culpability. He told a witness, Jessica Jackson: "I know I did it. It's my fault. I have been drinking." And, after acknowledging *Miranda* warnings, defendant repeatedly told Deputy Matthew Davis: "We both know I have been drinking and driving. I've had a prior D.U.I. So I know I'm in serious trouble." Defendant admitted he felt the effects of the alcohol in his system.

Two years prior to the fatal collision, on August 11, 2012, defendant had been arrested for driving under the influence of alcohol. He pled guilty to alcohol-related reckless driving, a lesser offense. He attended a court-ordered, first offender alcohol education course from September 2012 through November 2012. Defendant was terminated from the program for missing too many classes but, in June 2013, re-enrolled. Defendant completed the program following his re-enrollment. The program

included education about excessive drinking and the dangers of drinking and driving.

In connection with the court-ordered program, on August 29, 2012, defendant executed a contract with a "*Watson* clause." The reference is to *People v. Watson* (1981) 30 Cal.3d 290, 298, which held: "[W]hen the conduct [of the culpable party in a vehicular homicide case] can be characterized as a wanton disregard for life, and the facts demonstrate a subjective awareness of the risk created, malice may be implied. (§ 188.) In such cases, a murder charge is appropriate." The *Watson* clause stated: "I understand that alcohol and/or drugs impair my ability to drive and I understand the dangerous consequences of drinking or using drugs and driving. [¶] 'If you choose to ignore this warning, and drive while under the influence of alcohol or drugs o[r] both, and someone is killed, you may be charged with vehicular manslaughter or murder, the elements of malice in a charge of murder may be implied because you have knowledge of the danger of the conduct and the risk that such conduct poses to the public.'"

Additionally, consistent with California driver's license applications generally, defendant's July 13, 2011 driver's license application included the following notice: "I am hereby advised that being under the influence of alcohol or drugs, or both, impairs the ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If I drive while under the influence of alcohol or drugs, or both, and as a result, a person is killed, I can be charged with murder."

III. DISCUSSION

A. Implied Malice Second Degree Murder

To secure a conviction for implied malice second degree murder, the prosecution must prove: "'1. The killing resulted from an intentional act; [¶] 2. The natural consequences of the act are dangerous to human life; and [¶] 3. The act was *deliberately performed with knowledge of the danger to, and with conscious disregard for, human life*.' [Citation.]" (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1222, italics added; accord, *People v. Thomas* (2012) 53 Cal.4th 771, 814.) An implied malice finding requires a determination the defendant actually, subjectively appreciated the risk involved. (*Dellinger, supra*, 49 Cal.3d at p. 1217; *People v. Watson, supra*, 30 Cal.3d at pp. 296-297; *People v. Batchelor* (2014) 229 Cal.App.4th 1102, 1112-1113.) "A person who, knowing the hazards of drunk driving, drives a vehicle while intoxicated and proximately causes the death of another may be convicted of second degree murder under an implied malice theory. (*People v. Watson*[, *supra*,] 30 Cal.3d 290, 300-301.)" (*Batchelor, supra*, 229 Cal.App.4th at p. 1112.)

At trial, defense counsel disputed only the third element—whether defendant acted deliberately, with knowledge of the danger to, and with a conscious disregard for, human life. This was the pivotal issue at trial. The jury found he did. The jury rejected defense counsel's argument defendant did not remember much prior to the accident and the entire night was one huge blur.

Further, it is clear the jury carefully considered this issue. During deliberations, the jury asked, "Can we consider the

amount of alcohol the defendant had in his system to his ability to make a conscious decision?" And, "Are we allowed to consider whether we think the defendant is an alcoholic to his ability to make a conscious decision?" The trial court responded: "Whether or not the jury determines the defendant is an alcoholic is a question of fact for the jury to decide. The jury may utilize its factual findings in any manner consistent with the law. [¶] In regard to the questions the jury submitted, the law states that no act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in that condition. An intoxicated person shoulders the same criminal responsibility as a sober person. Voluntary intoxication does not negate implied malice."

B. Collision Scene and Autopsy Photographs of the Decedent

1. Proceedings in the trial court

After careful consideration, and over defendant's objection, the trial court allowed the prosecution to introduce two photographs of the decedent. The first was an 8.5 by 11 inch color photograph of the decedent in his vehicle at the collision site. The second was an 8.5 by 11 inch color photograph taken during the autopsy.

a. the collision scene photograph

Detective Brent Bunch was dispatched to the collision scene. Upon arrival, he observed a "severe auto collision." The victim's car was smoldering. Most of its interior had burned

away. The gas tank had been pushed forward almost into the cab. The two rear tires were facing each other at 45-degree angles. The severely burned victim was in the driver's seat. No facial or bodily features were apparent that would allow one to determine the driver's gender or age. Detective Bunch testified the photograph accurately depicted the condition of the decedent's body and his vehicle as he observed them at the scene.

b. the autopsy photograph

The medical examiner, Dr. Vadims Poukens, testified the victim suffered a skull fracture, fractures to his hands and wrists and abdominal bruising. His body was charred by fire. Dr. Poukens could not determine whether there were further injuries to the charred portions of the victim's body. Most likely, there were additional injuries. However, the skull fracture was the fatal injury. The decedent died on impact and was not alive when the charring occurred.

The prosecutor displayed the autopsy photograph on an overhead during Dr. Poukens's testimony. Before exhibiting the photograph, the prosecutor warned: "Folks in the audience, I will put up a very graphic photograph. So if anybody wants to take the opportunity to step outside, you may go ahead and do so." Dr. Poukens testified the photograph showed the decedent as he appeared when Dr. Poukens examined him and formed his opinions.

2. Analysis

Defendant asserts the photographs served no evidentiary purpose and should have been excluded. Defendant argues it was undisputed how the victim died, and the photographs had no bearing on the question whether defendant acted in conscious disregard for human life. With respect to the collision scene photograph, defendant contends it was cumulative to four witness videos of the crash site and the victim's vehicle in flames. Defendant argues the photographs were more prejudicial than probative; further, allowing the photographs was prejudicial error and a violation of his state and federal constitutional rights. We disagree.

The photographs were admissible provided they were relevant (Evid. Code, § 210), and provided the trial court, in its discretion, found they were not substantially more prejudicial that probative (Evid. Code, § 352). (*People v. Peoples* (2016) 62 Cal.4th 718, 748; *People v. Lewis* (2009) 46 Cal.4th 1255, 1282 (*Lewis*).) We address relevance and then prejudice.

a. relevance

The trial court had broad discretion to determine the photographs' relevance. (*People v. Smithey* (1999) 20 Cal.4th 936, 973; *People v. Scheid* (1997) 16 Cal.4th 1, 14 (*Scheid*).) The trial court did not err and acted well within its discretion in finding the two photographs relevant.

The photographs were highly probative of the fact, cause and manner of the victim's death. They were relevant to the circumstances of the crime, the condition of the victim's vehicle

and the state of his body as a result of defendant's act. They demonstrated the extent of the damage defendant caused. They corroborated the witnesses' observations at the scene. (*People v. Watson* (2008) 43 Cal.4th 652, 684 (*Watson*); *People v. Ramirez* (2006) 39 Cal.4th 398, 453 (*Ramirez*); *Scheid, supra*, 16 Cal.4th at p. 15.) They were admissible even though the prosecution was able to prove its case through other evidence. (*Watson, supra*, 43 Cal.4th at p. 684; *Scheid, supra*, 16 Cal.4th at p. 16; *People v. Wilson* (1992) 3 Cal.4th 926, 938.) It was immaterial whether other evidence established the same points. (*People v. Anderson* (2001) 25 Cal.4th 543, 592; *Scheid, supra*, 16 Cal.4th at p. 16.) The prosecution was not required to prove its case, including the details of the victim's death, solely from live witness testimony; the jury was entitled to see the details of the victim's condition to determine if the evidence supported the prosecution's case. (*People v. Cage* (2015) 62 Cal.4th 256, 283; *Lewis, supra*, 46 Cal.4th at p. 1282; *Watson, supra*, 43 Cal.4th at p. 684.) Nor were the photographs made inadmissible because they were offered in support of an issue not in dispute. (*People v. Lewis* (2001) 25 Cal.4th 610, 641; *People v. Watson, supra*, 43 Cal.4th at p. 684.)

The photographs also served to corroborate the investigating detective's and the coroner's testimony. (*Lewis, supra*, 46 Cal.4th at p. 1282; *Ramirez, supra*, 39 Cal.4th at p. 453; *People v. Crittenden* (1994) 9 Cal.4th 83, 132, overturned on other grounds in *Crittenden v. Chappell* (9th Cir. 2015) 804 F.3d 998, 1003, 1019.) Detective Bunch testified he found the victim in the driver's seat of his car, severely burned with no features apparent. The photograph taken at the scene, showing the decedent behind the wheel of his burned vehicle, corroborated the

detective's testimony. The coroner, Dr. Poukens, testified the victim's body was charred, which limited his ability to determine the full extent of the victim's injuries. The autopsy photograph was admissible to prove the fact of the charring as Dr. Poukens described.

Defendant claims the photographs merely were cumulative to the videos. Not so. Cumulative evidence is, "[a]dditional evidence that supports a fact established by the existing evidence (esp. that which does not need further support)." (Black's Law Dict. (10th ed. 2014) p. 675, col. 1.) The videos showed the crash scene, the two vehicles, and the victim's car engulfed in flames. One showed defendant walking near his automobile. Another showed a witness, Mr. Huerta, walking toward the intersection. None of the videos depicted the victim or the condition of his car in the aftermath of the fire, or the state of his body when the autopsy was performed.

b. prejudice

Relevant photographs are nevertheless inadmissible if the trial court determines, in its discretion, their probative value is outweighed by their prejudicial effect. (Evid. Code, § 352; *People v. Peoples, supra*, 62 Cal.4th at p. 748; *Lewis, supra*, 46 Cal.4th at p. 1282.) Pursuant to Evidence Code section 352, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." "The admission of photographs of a victim lies within the broad discretion of the trial court when a claim is made that they are unduly gruesome

or inflammatory. (*People v. Wilson, supra*, 3 Cal.4th at p. 938; *People v. Price* (1991) 1 Cal.4th 324, 441.) The court's exercise of that discretion will not be disturbed on appeal unless the probative value of the photographs clearly is outweighed by their prejudicial effect. [Citations.]" (*People v. Crittenden, supra*, 9 Cal.4th at pp. 133-134.) Prejudicial effect within the meaning of Evidence Code section 352 means "evidence that uniquely tends to evoke an emotional bias against a party as an individual, while having only slight probative value with regard to the issues. [Citation.]" (*Scheid, supra*, 16 Cal.4th at p. 19; accord, *People v. Benavides* (2005) 35 Cal.4th 69, 96.) We find no abuse of discretion.

Photographs of murder victims are always disturbing. (*People v. Gonzales* (2012) 54 Cal.4th 1234, 1272; *Ramirez, supra*, 39 Cal.4th at p. 454.) Here, however, both the prosecutor and the trial court took steps to minimize any potential prejudice by limiting the number and nature of the photographs introduced. As in *Gonzales*, "The record reflects that the experienced trial judge was well aware of his duty to weigh the prejudicial effect of the photographs against their probative value, and carefully did so. [Citations.]" (*Gonzales, supra*, 54 Cal.4th at p. 1272; accord, *Ramirez, supra*, 39 Cal.4th at p. 454.) And the prosecutor did not repeatedly display the photographs nor did he reference them in closing argument.

We have examined the photographs and find they are unpleasant but not unduly gruesome for a murder case of this kind. The challenged photographs accurately depict the nature of the crime and its consequences to the victim without unnecessarily evoking the jurors' emotional reactions. (*Ramirez, supra*, 39 Cal.4th at p. 454; *People v. Streeter* (2012) 54 Cal.4th

205, 238; *People v. Zambrano* (2007) 41 Cal.4th 1082, 1150, disapproved on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) The trial court reasonably could find the photographs were not so gruesome as to have impermissibly influenced the jury in light of the evidence of defendant's conduct and the severity of the result. And because the evidence was properly admitted, we reject defendant's federal and state constitutional claims. (*People v. Cage, supra*, 62 Cal.4th at p. 284; *Lewis, supra*, 46 Cal.4th at p. 1284.)

Even if the trial court abused its discretion, any error was harmless under both *People v. Watson* (1956) 46 Cal.2d 818, 836 and *Chapman v. California* (1967) 386 U.S. 18, 22-24. The photographs were no more inflammatory than the graphic testimony of witnesses describing the collision and its aftermath, the videos of the crash scene, Detective Bunch's description of the decedent seated in his car, and Dr. Poukens's description of the victim's injuries. (*People v. Cole* (2004) 33 Cal.4th 1158, 1199.) Further, the evidence of defendant's extreme intoxication, his acknowledgment he was drunk and should not have been driving, his prior conviction for alcohol-related reckless driving, his court-ordered education, his friend's warning and attempt to prevent him from driving, and the severity of the fatal collision forcefully established his guilt. There is no chance the two photographs at issue inflamed the jury and swayed it to convict.

3. Defendant's Citations to Authority are Unpersuasive

Defendant cites *People v. Marsh* (1985) 175 Cal.App.3d 987, 997-998, *People v. Gibson* (1976) 56 Cal.App.3d 119, 135, and

People v. Smith (1973) 33 Cal.App.3d 51, 69,[2] for the following proposition, "[W]hen the depiction of a victim's injuries is unnecessary for the resolution of any disputed issue and when an autopsy physician's testimony is adequate to inform the jury of the nature and location of those injuries, the introduction of gruesome photographs of the victims is error." None of the cases stands for the proposition advanced. Moreover, all are distinguishable. In *Gibson*, the Court of Appeal held photographs it described as "gruesome, revolting, and shocking to ordinary sensibilities" (*Gibson, supra*, 56 Cal.App.3d at p. 135) should have been excluded. The photographs were cumulative and only slightly relevant. Moreover, the coroner did not rely on them as the prosecution had represented he would. In *Marsh, supra*, 175 Cal.App.3d at pages 996-999, the prosecution projected onto a screen seven enlarged, gory autopsy photographs "in vivid color" of a two-year-old child who had been brutally beaten to death. The photographs were gruesome not due to the injuries inflicted but because the autopsy surgeon had removed the child's skull and covered the face with the exposed underside of the child's bloody scalp. (*Id.* at p. 999.) In *Smith, supra*, 33 Cal.App.3d at pages 68-70, the Court of Appeal held it was an abuse of discretion to allow three highly prejudicial, gruesome photographs of a female victim's semi-nude, terribly mutilated corpse. The present photographs were relevant and not cumulative, they were not made gruesome by anything the coroner had done to the victim's body, and they did not depict mutilation.

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[2] *Smith* was disapproved on another ground in *People v. Wetmore* (1978) 22 Cal.3d 318, 324, fn. 5.

C. Rule of Completeness: Evidence Code section 356

Over defense objection, the trial court excluded statements defendant made to Deputy Davis at the hospital. Defendant argued the statements were admissible under Evidence Code section 356, commonly referred to as the "rule of completeness." (*People v. Vines* (2001) 51 Cal.4th 830, 861.) The trial court found the rule of completeness did not apply; defendant's statements at the collision scene and at the hospital were separated by time and place and comprised distinct and separate conversations. Defendant challenges the ruling as an abuse of discretion. He further asserts excluding the statements violated his federal constitutional rights to present a defense, to due process, and to a fair trial. We find no abuse of discretion and no constitutional violation.

1. Applicable law

Evidence Code section 356 provides: "Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence." "The purpose of [Evidence Code section 356] is to prevent the use of selected aspects of a conversation, act, declaration, or writing, so as to create a misleading impression on the subjects addressed. [Citation.] Thus, if a party's oral admissions have been introduced in evidence, he may show other

portions of the same interview or conversation, even if they are self-serving, which 'have some bearing upon, or connection with, the admission . . . in evidence.' [Citations.]" (*People v. Arias* (1996) 13 Cal.4th 92, 156; accord, *People v. Melendez* (2016) 2 Cal.5th 1, 25.) "Application of Evidence Code section 356 hinges on the requirement that the two portions of a statement be 'on the same subject.'" (*People v. Vines, supra*, 51 Cal.4th at p. 861.)

Our review is for an abuse of discretion. (*People v. Cornejo* (2016) 3 Cal.App.5th 36, 73; *People v. Parrish* (2007) 152 Cal.App.4th 263, 274.) "'A [trial] court abuses its discretion when its ruling "falls outside the bounds of reason." [Citation.]' [Citation.]" (*People v. Carter* (2005) 36 Cal.4th 1114, 1149; accord, *People v. Kopatz* (2015) 61 Cal.4th 62, 85.)

2. Background

Matthew Davis, a deputy sheriff of Los Angeles County was dispatched to the collision scene at 3:47 a.m. He observed defendant was impaired by alcohol. Shortly thereafter, Deputy Davis escorted defendant to a patrol vehicle and read defendant his *Miranda* rights, which defendant acknowledged. Deputy Davis then asked defendant about his activities that evening. Defendant described taking the party bus to Los Angeles and then returning to Palmdale. Defendant said he was drinking alcohol the entire time. Deputy Davis asked defendant a series of standard questions. Defendant repeatedly interrupted and told Deputy Davis: "We both know I've been drinking and driving. I have a prior D.U.I. We both know I'm in serious trouble." Defendant admitted he had been drinking alcohol and had been involved in a collision. About an hour later, Deputy Davis

transported defendant to the hospital. Outside the jury's presence, Deputy Davis testified the conversation he had with defendant at the collision scene did not continue during the ride to the hospital. Defendant did spontaneously repeat his earlier statements, but Deputy Davis did not respond. Deputy Davis redirected the conversation. He explained what would occur once they reached the hospital. At the hospital, necessary paperwork was completed and, at 5:20 a.m., a nurse drew defendant's blood. More than an hour after defendant spoke with Deputy Davis at the scene, and at least 25 minutes after they arrived at the hospital, defendant told Deputy Davis, "[H]e didn't remember what he was doing," and "He intended to make a phone call to his mother." The trial court assumed defendant meant he did not remember what he was doing and he had intended to call his mother prior to the accident.

3. Analysis

The trial court did not abuse its discretion. In the aftermath of the collision defendant admitted his culpability; he had been drinking and driving, he had a prior "D.U.I." conviction, and he knew he was in serious trouble. The subject of the excluded statements was what he remembered and whether he intended to call his mother prior to the collision. These are different subjects. They relate to different time periods—prior to and after the collision. They were different conversations separated by time and location. That defendant repeated his inculpatory statements to Deputy Davis during transport to the hospital without a response from the deputy did not transform the earlier and later comments into a continuous conversation.

Further, the excluded statements had no bearing on the inculpatory statements. Defendant's comments about his lack of memory and his intent to call his mother prior to the accident were not necessary to make his inculpatory post-collision statements understood. The fact that defendant's recollection of events prior to the collision was imperfect and he had intended to call his mother was unnecessary to explain his admission he had been driving while intoxicated, he had a prior such offense, and he knew he was in serious trouble. Nor did excluding the later statements create a misleading impression of defendant's acknowledgment of wrongdoing. Accordingly, the trial court did not abuse its discretion in finding Evidence Code section 356 inapplicable. And because the evidence was properly excluded, there was no violation of defendant's constitutional rights. (*People v. Streeter, supra*, 54 Cal.4th at p. 238; *People v. Cole, supra*, 33 Cal.4th at p. 1197, fn. 8.)

Even if the trial court had erred, the error would be harmless. (*People v. Arias, supra*, 13 Cal.4th at p. 157; *People v. Watson, supra*, 46 Cal.2d at p. 836.) As noted above, the evidence of defendant's extreme intoxication, his acknowledgment he was drunk and should not have been driving, his prior conviction for alcohol-related reckless driving, his court-ordered education, his friend's warning and attempt to prevent him from driving, and the severity of the fatal collision forcefully established his guilt. There is no chance the jury's verdict would have been more favorable to defendant had the trial court allowed defendant to introduce the statements he made to Deputy Davis at the hospital.

D. Cumulative Effect of Errors

Defendant contends he is entitled to reversal because of cumulative error. We find no prejudicial legal error. Therefore, we reject defendant's cumulative effect argument. (*People v. Landry* (2016) 2 Cal.5th 52, 101; *People v. Melendez, supra*, 2 Cal.5th at p. 33.)

E. Presentence Custody Credit

The trial court gave defendant credit for 654 days in presentence custody. However, defendant was arrested on September 27, 2014, released on bail on September 30, 2014, returned to custody on October 30, 2014, and sentenced on August 12, 2016. Therefore, he was entitled to credit for 657 days in presentence custody. (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48; *People v. Morgain* (2009) 177 Cal.App.4th 454, 469.) The judgment must be modified and the abstract of judgment amended to so provide.

IV. DISPOSITION

The judgment is modified to reflect 657 days of presentence custody credit. The judgment is affirmed in all other respects. Upon remittitur issuance, 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.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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.