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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DANIEL GARCIA, Defendant and Appellant.	A170482 (City & County of San Francisco Super. Ct. No. 23017823)

While being pursued by police officers, defendant Daniel Garcia tossed two pipe bombs out his car window which exploded at different locations. A jury convicted him of multiple offenses including, as relevant here, three violations of Penal Code[1] section 18740—exploding a destructive device with the intent to injure, intimidate, or terrify—and three violations of section 18710—possession of a destructive device. Garcia argues there is insufficient evidence to support three, rather than two, section 18740 convictions. Additionally, he challenges the section 18710 convictions which were lesser offenses of original charges. We vacate two of Garcia's possession convictions, and otherwise, we affirm.

[1] Undesignated statutory references are to the Penal Code.

I. BACKGROUND

In December 2023, Garcia was charged by felony information with attempted second degree robbery (§§ 211, 664; count 1); three counts of explosion of a destructive device with intent to murder (§ 18745; counts 2, 3, 4); three counts of explosion of a destructive device with intent to injure, intimidate, or terrify (§ 18740; counts 5, 6, 7); three counts of reckless or malicious possession of a destructive device in public places (§ 18715, subd. (a); counts 8, 9, 10); possession or manufacture of combustible material or incendiary device (§ 453, subd. (a); count 11); and evading a police officer with willful disregard for safety (Veh. Code, § 2800.2, subd. (a); count 12). The intent to murder charges (counts 2 through 4) were alleged for an explosion at Jones Street and Jackson Street (Jones and Jackson) and each count identified one of the pursuing police officers. The intent to injure, intimidate, or terrify charges (counts 5 through 7) were alleged for an explosion at Eighth Street and Mission Street (Eighth and Mission) and also each identified one of the police officers. The possession charges (counts 8 through 10) were each alleged for a specific explosive device—two pipe bombs which exploded and a pipe bomb found in Garcia's vehicle. The information also alleged sentencing enhancements and aggravating circumstances.

A. Jury Trial[2]

A jury trial commenced in February 2024.

1. Prosecution Case

In October 2023, Garcia attended mass at Saints Peter and Paul Church in San Francisco. In the church, he accused another parishioner of stepping on his shorts, demanded the parishioner pay him $50, and punched the parishioner in the right ear twice. He then walked out of the church.

[2] We recite only the facts relevant to the issues raised on appeal.

One parishioner who followed Garcia yelled at him to stop after he had crossed the street, and when Garcia stood and looked at him, the parishioner reached toward his pocket and got into a fighting stance. Garcia took something out of his pocket, which the parishioner thought was a knife, and yelled, " 'I have one, too.' " Other parishioners, one of whom called the police, followed Garcia as he walked to his car, a silver or gray BMW. Garcia took a red cooler out of his car, then put it back in, got into the driver's seat, turned the car on, stayed there for one to two minutes, and drove away.

San Francisco police officers testified to the following: As Officer Sam Yuen responded to the call about an assault at the church, he was updated that the suspect was walking westbound on Filbert Street. When he got to Filbert and Jones Streets, people waved him down, told him the suspect got into a silver BMW, and pointed up Jones Street, so Officer Yuen drove southbound on Jones following the BMW. He drove a marked police SUV and was alone in his vehicle. When Officer Yuen radioed for backup, Officers Juan Lara and Bryan Neuerburg responded. Officer Lara drove a marked police vehicle and his partner, Officer Neuerburg, was in the passenger seat. Officer Lara followed Officer Yuen as he drove up the hill on Jones Street and he could see the BMW. At the intersection with Pacific Street, Garcia stopped in front of Officer Yuen. Once Garcia crossed through the intersection, Officer Yuen turned on his lights and siren and attempted to initiate a traffic stop. To conduct a high-risk felony traffic stop, Officer Lara pulled into the opposite northbound lane in an attempt to get parallel with Officer Yuen's vehicle. Officer Lara was close enough to read the BMW's license plate. Garcia slowed down but did not stop, so Officer Yuen told him to pull over on the PA system. When Garcia neared the corner of Jones and Jackson, all three police officers saw him throw a lit package out of the

driver's window. Garcia threw the package out and behind him into the opposite lane of traffic—the lane where Officer Lara's vehicle was—and about 10 feet to the left of Officer Yuen's vehicle. The package was four to five yards in front of Officer Lara's vehicle. Thinking it could be an explosive device, Officer Lara quickly reversed. The package exploded next to Officer Yuen's vehicle and there was a large ball of flame. Officer Yuen felt things hit the vehicle. Officer Lara, who had reversed about 18 yards from the device, felt a shock wave go through the car and his body.

After the explosion, Garcia sped off and the two police vehicles pursued him with lights and sirens as he drove at high speeds, running stop signs and red lights. Officer Yuen got stopped in traffic at Hyde and California Streets so Officers Lara and Neuerburg took over as primary pursuit. At this point, Officer Lara was about seven car lengths behind Garcia and had not been able to see what the BMW's driver looked like. At Hyde and O'Farrell Streets, both Officers Lara and Neuerburg saw Garcia hold a package, which looked like the first one, out the window and wave it. He then brought the package back into the BMW.

The police officers continued the pursuit driving south on Hyde Street, crossing Market Street onto Eighth Street. While driving on Eighth near Mission Street, Officers Lara, Neuerburg, and Yuen saw Garcia throw another package out his window. At that time, Officers Lara and Neuerburg's vehicle was only car lengths behind the BMW. Officer Yuen was a half block behind the BMW. Garcia drove in the far left lane. Officer Lara swerved as far as he could get to the right side of the road, floored the gas, and sped past the device, which exploded behind them. Officer Lara saw the explosion through the side mirror and he heard and felt it. Officer Yuen was in the middle lane and heard the explosion but did not see it because he was

trying to make sure he had clear traffic and there were no pedestrians in the intersection.[3]

After the second explosion, Garcia drove onto the Bay Bridge. San Francisco police officers, and later California Highway Patrol (CHP) officers who took over the pursuit, followed Garcia as he drove through the East Bay. Eventually, Garcia was apprehended in Martinez after he hit a curb and disabled his car. Garcia told the detaining CHP officer there was a gas bottle next to a pipe bomb in his car. A pipe bomb with a fuse attached to a bottle and wrapped in a towel was found on the passenger seat. A San Francisco Police Department bomb squad member testifying as an expert witness testified that the three devices—at Jones and Jackson, at Eighth and Mission, and inside the BMW—were pipe bombs. Since the device inside the BMW was still intact, the expert explained it was a pipe bomb secured next to a Molotov cocktail, packaged together with a rag and zip ties. Wrapping them in rags would prevent the bottles from breaking after they had been thrown. If a bottle broke on impact, the gasoline would spill out and by the time the wick burned down and ignited the pipe bomb, the gasoline would be a waste. If a bottle remained intact, the pipe bomb explosion would cause it to rupture, enhancing the "fireball."

2. Defense Case

Garcia testified that he went to church and planned to go camping after mass. He admitted to punching the parishioner in the face. He then left the church and walked towards his car which was parked on Jones Street. He took a cooler containing "homemade explosives" from his trunk and put it on

[3] A third police vehicle joined in the pursuit on Hyde Street. That vehicle had not yet caught up when Garcia threw the second device at Eighth and Mission and was not near the explosion.

the front seat for safe keeping. As he drove heading towards home he noticed "some police" behind him after driving a couple blocks. When they turned their lights on to stop him, that is when he "started breaking the law" and tried to get away.

On Jones Street, Garcia knew there were two police cars behind him. He thought they were behind him, not in both lanes. He lit one of the explosives and threw it out the window onto the road next to him. He did this "to interfere directly behind [him] pursuing [him]." He thought the explosion would create a diversion long enough for the police to wonder what had happened and then he could quickly turn and get out of their sight. Using gasoline in the explosive meant that when it exploded it would make more than just a loud noise; it also created a fireball, which would create a diversion. He "noticed there was a police officer behind [him]." He was not trying to kill, threaten, injure, or terrify any police officers. When the first explosion did not have the effect he wanted, he continued driving straight. His objective was to get away from the police, who he knew were still following him as he could see multiple police cars behind him.

As Garcia approached Market Street, he knew he was getting close to the freeway "and there's a bunch of cops following [him] with their lights on," so he "was going to try to create another diversion" to get out of sight. When he waved the second device out the window, it was a "warning" to the police that he had another one and could use it. But the warning did not work because "they were still really close to [him]." On Eighth Street there were multiple lanes. When asked why he threw the device out there, he testified it "was a wide open area." He was leading the pursuit and "[t]here's ten cop cars chasing [him]." He assumed the police would try to block him off before the freeway so it was his "last chance to create a diversion" to get away. He

was not trying to injure, threaten, or intimidate any police officers. After the second explosion he got on the freeway and drove towards his home in Concord.

Garcia explained that the devices were gunpowder he stuffed in a pipe and put a fuse in it, attached to a bottle filled with gasoline. He had them because he was going camping and figured they would be "useful to have" in case he was attacked by an animal. If he was not attacked he would blow them up just for fun.

B. Verdict and Sentence

After the trial court received all evidence, the court granted the People's motion to dismiss counts 8 and 9 (§ 18715) and count 11 (§ 453). The jury found Garcia guilty of counts 5 through 7 (§ 18740), count 10 (§ 18710—possession of the device found inside his vehicle), and count 12 (Veh. Code, § 2800.2, subd. (a)). On counts 2 through 4, the jury found Garcia not guilty of section 18745—exploding a destructive device with intent to murder—but found him guilty of the lesser offense of possession pursuant to section 18710. As to count 1, the jury deadlocked and the court declared a mistrial. In April 2024, the court sentenced Garcia to nine years in prison. As relevant here, the sentence included five years on count 5, one year eight months on each of counts 6 and 7, and two years on each of counts 2 through 4, with the counts 2 through 4 sentences to run concurrently with the other sentences.

II. DISCUSSION

Garcia challenges one of his section 18740 convictions (count 6) and three of his section 18710 convictions (counts 2 through 4).

A. Section 18740 Convictions (Counts 5 through 7)

Garcia challenges one of his three convictions for explosion of a destructive device with intent to injure, intimidate, or terrify another person

in violation of section 18740. He argues the evidence was insufficient to support three, rather than two, convictions.

In reviewing for sufficiency of the evidence, " 'we review the 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." [Citation.] . . . "We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence." ' " (*People v. Serrano* (2024) 100 Cal.App.5th 1324, 1333.) " ' "[T]he relevant question is 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." ' " (*People v. Alvarez* (2025) 18 Cal.5th 387, 478.) Accordingly, reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' " (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

" 'Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence.' " (*People v. Brooks* (2017) 3 Cal.5th 1, 57.) " 'Evidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction.' " (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1055.) We " ' "must accept logical inferences that the jury might have drawn from the evidence even if [we] would have concluded otherwise." ' " (*People v. Solomon* (2010) 49 Cal.4th 792, 811–812.)

Section 18740 provides, in part: "Every person who possesses, explodes, ignites, or attempts to explode or ignite any destructive device or any

explosive with intent to injure, intimidate, or terrify any person . . . is guilty of a felony." A section 18740 offense is a specific intent crime. (See *People v. Hood* (1969) 1 Cal.3d 444, 457 [when the definition of a crime " 'refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent' "].)

Garcia was convicted of three section 18740 offenses (counts 5 through 7). As alleged in the information, and confirmed at trial, counts 5 through 7 related only to the pipe bomb at Eighth and Mission, with each count being alleged against one police officer: Officer Yuen (count 5), Officer Neuerburg (count 6), and Officer Lara (count 7).[4] On appeal, Garcia challenges only one of his convictions—the conviction as to Officer Neuerburg, the passenger in the vehicle driven by Officer Lara. Garcia, therefore, does not challenge that: (1) he exploded a destructive device at Eighth and Mission, and (2) he did so with the intent to injure, intimidate, or terrify *two* of the pursuing police officers. (See § 18740.) As to Officer Neuerburg, Garcia contends that while he knew there were two police cars pursuing him, he did not know how many officers were in each vehicle. Accordingly, if he did not know Officer Neuerburg was in the car, he could not have acted with the intent to injure, intimidate, or terrify him. We reject his contention.

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[4] Garcia confuses the record. For example, in his opening brief, he argues that there was insufficient evidence "that by detonating only two devices with regard to the two patrol cars, albeit occupied by a total of three officers, that [he] was guilty of three violations of" section 18740. But the section 18740 convictions were only for one of the pipe bombs at issue in this case—the bomb at Eighth and Mission. The first pipe bomb Garcia exploded at Jones and Jackson formed the basis for the charges in counts 2 through 4 (§ 18745). Therefore, any reference to or reliance on "two devices" as related to Garcia's challenge to his section 18740 convictions is irrelevant.

The jury was instructed that section 18740 is a specific intent crime and that each of counts 5 through 7 was charged as to one of the named police officers. Each verdict form finding Garcia guilty of counts 5 through 7 identified the name of the officer. In finding Garcia guilty of each count, the jury therefore found he exploded the pipe bomb at Eighth and Mission with the intent to injure, intimidate, or terrify all three officers. We conclude that substantial evidence in the record supports the verdicts.

The record demonstrates that when Garcia tossed the first pipe bomb out of his car window at Jones and Jackson, both police vehicles were near his car—Officer Yuen was directly behind him and Officer Lara, with Officer Neuerburg in the passenger seat, had pulled into the opposite lane. Officer Lara was close enough to Garcia's car that he could read the license plate. Officer Lara's vehicle was only four to five yards behind where the pipe bomb was tossed and he had to quickly reverse to get some distance. After the first explosion, as Garcia fled from the police through San Francisco, both police vehicles pursued him. Initially, Officer Yuen was the lead pursuit car. When he got stopped in traffic, Officers Lara and Neuerburg took over the pursuit and were car lengths behind Garcia. They were close enough to see Garcia wave the second pipe bomb out the window. Shortly thereafter, Officers Lara and Neuerburg were only car lengths behind Garcia when they saw Garcia throw the second pipe bomb out his car window at Eighth and Mission. At this point, Officers Lara and Neuerburg's vehicle was following close enough to Garcia's car that they had passed the device before it exploded.

Garcia's own testimony demonstrates that he knew he was being followed by the police. When he initially got in his car and drove away from his parking spot, he noticed "some police" behind him. When he threw the first pipe bomb out on Jones Street, he knew there were two police cars

behind him. Later, he waved the second pipe bomb out the window as a "warning" to the police. The warning had not worked because "they were still really close to [him]." Based on this testimony, Garcia was looking behind him and keeping track of the pursuing police vehicles when Officer Lara drove as the primary pursuit vehicle closest to him. When he approached Market Street, Garcia testified there were "a bunch of cops following [him] with their lights on." He explained that as he was being pursued in the area where he tossed out the second pipe bomb, there were "ten cop cars chasing [him]."

Based on the record, the jury could reasonably infer that Garcia knew that the two pursuing police vehicles were occupied by more than two people total and that he acted with the intent to injure, intimidate, or terrify all of them.

The cases on which Garcia relies are inapposite. In *People v. Perez* (2010) 50 Cal.4th 222, the defendant fired a single bullet from a moving car 60 feet away at a group of eight people, including seven peace officers. (*Id.* at p. 224.) One officer was hit but no one was killed. (*Ibid.*) The Supreme Court reversed seven of eight attempted murder convictions, concluding that "the evidence is sufficient to sustain only a single count of premeditated attempted murder of a peace officer." (*Id.* at p. 225.) The court stated, "[T]here is no evidence that [the] defendant knew or specifically targeted any particular individual or individuals in the group of officers he fired upon. Nor is there evidence that he specifically intended to kill two or more persons with the single shot. Finally, there is no evidence [the] defendant specifically intended to kill two or more persons in the group but was only thwarted from firing off the required additional shots by circumstances beyond his control.

Without more, this record will not support conviction of eight counts of premeditated attempted murder." (*Id*. at pp. 230–231, fns. omitted.)

In *People v. Ibarra* (2024) 106 Cal.App.5th 1070 (*Ibarra*), the defendant and others drove onto the owner's property and got out of their truck wearing ski masks. (*Id*. at p. 1075.) Frightened, the owner ran into a shed on his property, inside which a worker was napping on the floor. (*Ibid*.) The defendant and others shot at the shed and while both the owner and worker were hit, neither died. (*Id*. at pp. 1075–1076.) The trial court instructed the jury on the relationship between the intent to kill the property owner and the concurrent intent to kill the worker, that is, the kill zone theory. (*Id*. at p. 1076.) " ' "Where the means employed to commit the crime against a primary victim create a zone of harm around that victim, the factfinder can reasonably infer that the defendant intended that harm to all who are in the anticipated zone." ' " (*Id*. at p. 1076.) As relevant here, the jury convicted the defendant of two counts of attempted murder, for the owner and the worker. (*Id*. at pp. 1074, 1075.)

On appeal, the defendant challenged the kill zone theory instruction, asserting there was no evidence the defendant knew that the worker was inside the shed when he shot at it. (*Ibarra*, *supra*, 106 Cal.App.5th at p. 1077.) The appellate court concluded "there was insufficient evidence to support the kill zone instruction because . . . [the defendant] could not have had a specific intent to kill [the worker] if there was no evidence that he was aware of [the worker's] presence in the kill zone." (*Ibid*.) There was a "dearth of evidence" that the shooters knew that the worker was in the shed. (*Id*. at p. 1078.) The worker was already napping on the floor of the shed when the defendant entered the property and they saw only the owner run into the shed. The worker testified that he never saw the shooters, nor was

there evidence that the defendant saw or could have seen the worker in the shed. (*Ibid*.) Discussing the kill zone theory, the court explained "it is not possible to intend to kill someone in the vicinity of a target if the attacker has no knowledge that the person is present." (*Id*. at p. 1079.)

These cases are inapposite and factually distinguishable. Unlike *Perez*, this case does not involve a defendant firing a single bullet from a distance at a group of people. Instead, Garcia tossed a pipe bomb out of his car knowing he was being pursued by police vehicles who were positioned in such a way that exploding one device could injure, terrify, or intimidate all of them. *Ibarra* is also inapplicable. Here, the prosecutor did not rely on the concurrent intent, or kill zone, theory of liability; nor did the trial court instruct the jury on it.[5] As the People assert, the theory was that Garcia had the requisite intent for all three officers alleged in counts 5 through 7. Further, *Ibarra* is distinguishable. There, the worker, who was in the shed before the shooters arrived, testified that "he never saw the shooters" and "there was no evidence that [the defendant] saw or could have seen [the worker] in the shed." (*Ibarra*, *supra*, 106 Cal.App.5th at p. 1078.) Here, by contrast, the police officers testified they could see Garcia, including being close enough to see him wave the second pipe bomb out the window and, later, toss it out of his car. Additionally, there is evidence that Garcia "could have seen" (*ibid*.) the police officers in the pursuing vehicles, including two police officers in one of the vehicles. As discussed *ante*, the jury could reasonably infer from the evidence that Garcia knew the pursuing cars

[5] We express no opinion on whether a concurrent intent theory to prove a specific intent to kill on an allegation of attempted murder is applicable to section 18740.

contained more than two police officers whom he was trying to injure, intimidate, or terrify.

In sum, viewing the evidence in the light most favorable to the judgment, we conclude a reasonable trier of fact could find that Garcia acted with the intent to injure, intimidate, or terrify all three police officers named in counts 5 through 7. We cannot conclude that upon no hypothesis whatever is there substantial evidence to support the verdicts and, therefore, reversal is unwarranted. (See *People v. Bolin*, *supra*, 18 Cal.4th at p. 331.)

B. Section 18710 Convictions (Counts 2 through 4)

1. Lesser Offenses

Garcia argues he was unlawfully convicted of three lesser offenses of violating section 18710 in counts 2 through 4.

Section 954 provides, in pertinent part: "An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts . . . . The prosecution is not required to elect between the different offenses or counts set forth in the accusatory pleading, but the defendant may be convicted of any number of the offenses charged." As the Supreme Court has interpreted section 954, " 'a defendant properly may be convicted of two offenses if neither offense is necessarily included in the other, even though under section 654 he or she could not be punished for more than one offense arising from the single act or indivisible course of conduct.' " (*People v. Vidana* (2016) 1 Cal.5th 632, 637 (*Vidana*).) " 'The most reasonable construction of the language in section 954 is that the statute authorizes multiple convictions for *different or distinct offenses*, but does not permit multiple convictions for a different statement of the same offense when it is based on

the *same act or course of conduct*.' " (*Id.* at p. 650, italics added; see also *People v. Sanders* (2012) 55 Cal.4th 731, 736, italics added [if "a defendant is found guilty of both a greater and a necessarily lesser included offense *arising out of the same act or course of conduct*," the greater offense "conviction is controlling, and the conviction of the lesser offense must be reversed"].) We review de novo whether a defendant may lawfully be subject to multiple convictions. (*People v. Villegas* (2012) 205 Cal.App.4th 642, 646.)

In counts 2 through 4, Garcia was charged with three violations of section 18745—exploding a destructive device with intent to commit murder. The jury found Garcia not guilty of intent to murder but found him guilty of the lesser offense of possession of a destructive device in violation of section 18710. Additionally, the jury found Garcia guilty of the three section 18740 offenses charged in counts 5 through 7. The trial court had instructed the jury that section 18710 was a lesser offense of counts 2 through 7.[6] The court imposed sentences for each section 18710 conviction in counts 2 through 4. Garcia argues that the section 18710 convictions, which were lesser offenses of section 18745, should have been dismissed because, he asserts, they were also lesser offenses of the section 18740 charges for which he was convicted.

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[6] We observe some discrepancies between section 18710 and section 18715. On counts 2 through 4, the jury found Garcia guilty of violating section 18710 as a lesser offense of section 18745. Additionally, on count 10, the jury found Garcia guilty of violating section 18710 for the pipe bomb found in his car. The information had charged Garcia with three counts of violating section *18715*—reckless or malicious possession of a destructive device (counts 8 through 10)—not section *18710*. The People subsequently dismissed counts 8 and 9. The record demonstrates some confusion between whether Garcia was alleged to have violated section 18710 or section 18715. After a discussion between the trial court and counsel following a jury request for clarification, the statute the jury considered as lesser offenses in counts 2 through 7 and as the charged offense in count 10 was section 18710, not section 18715.

The People argue that Garcia was not convicted of greater and lesser offenses for the same conduct.

We conclude that Garcia's section 18710 convictions for possession as lesser offenses of section 18745 were proper, at least on this ground, because they did not arise out of the same act or course of conduct for which Garcia was convicted under section 18740. As relevant here, the information charged Garcia with three counts of explosion of a destructive device with intent to murder (§ 18745; counts 2 through 4) and three counts of explosion of a destructive device with intent to injure, intimidate, or terrify (§ 18740; counts 5 through 7). As alleged in the information, counts 2 through 4 were for the device exploded at Jones and Jackson, with each count alleging intent to murder one named police officer. Counts 5 through 7 were for the device exploded at Eighth and Mission. At trial, the prosecutor confirmed these charges and theories in his closing argument. Garcia's trial counsel did so as well. Defense counsel argued Garcia was not guilty of any of the offenses charged in counts 2 through 7, but he was guilty of the lesser offense of possession (§ 18710) for the charges related to both explosions.

Further, the jury instructions made clear that counts 2 through 4 were alleged offenses committed at Jones and Jackson and counts 5 through 7 were alleged for different offenses, those committed at Eighth and Mission. The instructions also explained that Garcia was charged in counts 2 through 7 with a lesser crime of possession in violation of section 18710, specifying that counts 2 through 4 were for possession of the device at Jones and Jackson and counts 5 through 7 were for possession of the device at Eighth and Mission. The jury was instructed that if it found Garcia not guilty of a greater charged crime it could find him guilty of a lesser crime, but that he

could "not be convicted of both a greater and lesser crime for the same conduct."

Under these circumstances, the section 18710 convictions for lesser offenses in counts 2 through 4 were for different acts or conduct than the section 18740 convictions in counts 5 through 7. Garcia committed separate acts in possessing the first pipe bomb at Jones and Jackson and possessing (and exploding) the second pipe bomb at Eighth and Mission. In his reply brief, Garcia acknowledges as much, stating he "committed three acts, two by exploding the devices and one for possessing an unexploded one [referring to the pipe bomb found in his BMW]." Garcia cites *People v. Mateo* (1959) 171 Cal.App.2d 850, a narcotics case. There, this court explained that "where the only possession shown is necessarily incidental to its sale or furnishing[,] separate convictions for sale and possession cannot be had." (*Id.* at p. 857.) But, the court continued, "conviction may be had where the narcotic possessed is separate and distinct from that sold," and there "the marijuana left in the house was separate and distinct from that sold. Hence separate convictions for sale and possession were proper." (*Ibid.*) Similarly here, the pipe bomb at Jones and Jackson was separate and distinct from the pipe bomb at Eighth and Mission. (See also *People v. Von Latta* (1968) 258 Cal.App.2d 329, 339–340 [the defendant's possession of marijuana with intent to sell in Garden Grove was distinct from his possession of marijuana in Newport Beach, as the "subject matter of each 'act of possession' was different"].) In sum, Garcia was not convicted of greater offenses and lesser offenses for the same act or course of conduct. (See *Vidana*, *supra*, 1 Cal.5th at p. 650.)

2. Multiple Convictions for the Same Act

The People concede that two of Garcia's three convictions on counts 2 through 4 were improper on a separate basis and, therefore, should be vacated. We accept their concession. Section 954 bars multiple convictions for the same offense when it is based on the same act or course of conduct. (*Vidana*, *supra*, 1 Cal.5th at p. 650.) Here, the convictions on counts 2 through 4 were for the same offense based on the same act—possession of one pipe bomb at Jones and Jackson. Accordingly, we vacate Garcia's convictions on counts 3 and 4.[7]

III. DISPOSITION

The convictions on counts 3 and 4 (identified as counts 14 and 15 in the abstract of judgment) are vacated. The trial court is directed to prepare an amended abstract of judgment reflecting the judgment as modified in this opinion and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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LANGHORNE WILSON, J.

WE CONCUR:

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HUMES, P. J.

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SMILEY, J.

[7] We requested, and the parties submitted, supplemental briefing on this issue.