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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

HAROLD OSBORN DAVIS, JR.,

Defendant and Appellant.

A129904

(Lake County  
Super. Ct. No. CR921394)

BY THE COURT:

It is ordered that the opinion filed herein on January 25, 2012, be modified in the following respects:

1. On page 4, in the fifth line of the first paragraph of the “DISCUSSION” portion of the opinion, the citation in the parenthetical clause should be changed to “§ 240.”

2. The citation on the last line of page 7 of the opinion should be changed to “section 240.”

3. On page 10, the following should be added as the final paragraph of the “DISCUSSION” portion of the opinion:

“In any event, any error caused by any ineffective assistance of counsel was clearly harmless, because the failure to instruct on simple assault could not have been prejudicial. This is so because there was no reasonable likelihood that a better result would have been reached had the jury been instructed on a section 240 offense, given the evidence presented to it regarding the assault committed by appellant. That evidence

clearly supported his conviction under section 245, subdivision (a)(1), i.e., aggravated assault.”

These modifications do not effect a change in the judgment. The petition for rehearing is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Haerle, Acting P.J.