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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL JOSHUA KNIGHT,

Defendant and Appellant.

F062043

(Super. Ct. No. SF15648A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Judith K. Dulcich, Judge.

Jessie Morris, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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In July of 2010, an information was filed charging appellant Manuel Joshua Knight in count 1 of battery against a custodial officer causing injury (Pen. Code, § 243,

subd. (c)(1))<sup>1</sup>; in count 2 of battery against a custodial officer (§ 243.1); and in count 3 of resisting an executive officer by threats or violence (§ 69). In November of 2010, a jury was impaneled to try the case, but after the jury was unable to reach a verdict on any of the counts, a mistrial declared.

On January 27, 2011, following a second jury trial, appellant was found guilty in count 1 of the lesser offense of battery on a peace officer without injury (§ 243, subd. (b)) a misdemeanor; in count 2 of battery against a custodial officer (§ 243.1), a felony; and in count 3 of the lesser offense of resisting or obstructing a peace officer (§ 148, subd. (a)(1)), a misdemeanor.

The trial court denied probation and sentenced Knight to state prison for the midterm of two years for the felony offense, and to 90 days in county jail for each of the misdemeanor convictions, to be served concurrently with the prison sentence.

On appeal, we agree with Knight's contentions that he was improperly convicted of battery upon a custodial officer in violation of section 243.1, and that the section 654 prohibition against multiple punishment for offenses arising from the same transaction barred separate punishments for misdemeanor battery of a peace officer and resisting a peace officer. We disagree with his claim that exclusion of his grandmother from the courtroom violated his constitutional right to a public trial. We remand for resentencing.

### **STATEMENT OF THE FACTS**

Mid-morning on May 10, 2010, Tracy Wright, a detention deputy with the Kern County Sheriff's Department, was on duty at the Lerdo Pre-Trial Facility when she was called to respond to E Pod. Deputy Wright had been a detention deputy for approximately 11 years, and her duties included supervising and maintaining the safety and security of the inmates. At the time of the incident in question, Deputy Wright was wearing a standard sheriff's uniform and was not armed. When Deputy Wright arrived at

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

E Pod, another deputy placed appellant Knight in her custody and instructed her to escort him to a holding cell in “receiving,” a holding area for inmates being brought in or taken out of the facility.

When Deputy Wright and Knight arrived at receiving, Knight turned toward the releasing area and said he was going to be released. Deputy Wright told him “no,” and tightened her grip on his arm to turn him back toward the holding cell area. As Deputy Wright did this, Knight turned suddenly towards her and “headbutted” her. Deputy Wright was dizzy and lightheaded, but was able to push Knight against a nearby wall, where both fell down onto the concrete floor. Deputy Wright fell on her back, hit her head on the concrete floor, and lost consciousness. Knight fell face-down on top of her.

Detention Deputy Carlos Quiroz, the supervisor on duty in the receiving area that morning, saw Knight fall on top of Deputy Wright. He then announced a “Code Red,” or inmate-officer fight, over the radio and ran over to pull Knight off of Deputy Wright. Eight to 10 other detention deputies responded, including Detention Deputy Kalae Paxson, who pulled Deputy Wright away from Knight as he was struggling with Deputy Quiroz.

When Deputy Wright regained consciousness, she was disoriented and confused and her eyes glazed over. When she attempted to pull herself up on a nearby table, she became nauseated and began vomiting. She also experienced severe pain in the front and back of her head, dizziness, and blurred vision. Both Deputies Quiroz and Paxson saw a red mark on Deputy Wright’s forehead.

On May 18, 2010, Deputy Quiroz contacted appellant Knight to discuss the events of May 10, 2010. Deputy Quiroz read Knight his *Miranda*<sup>2</sup> rights, which he waived. According to Knight, after Deputy Wright escorted him to receiving, Knight did not know where to go, so he turned to Deputy Wright, startling her and causing her to fall to

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

the ground. Knight denied head-butting Deputy Wright and denied making any contact with her with his own body.

At trial, Knight claimed that, when he and Deputy Wright arrived at “receiving,” he turned to look around and, when he did so, Deputy Wright told him to go to the ground. Knight complied by getting down on his knees and lying on his stomach. Approximately six officers then ran in, beat him up with their feet, knees and elbows, and took him to the infirmary. Knight was not certain whether Deputy Wright was one of the deputies who beat him up, nor could he identify any of his alleged attackers.

Knight denied head-butting Deputy Wright, striking any part of her with any part of his body, lunging at her, running from her, or trying to turn away from her. Knight testified that Deputy Wright did not pull or push him in any direction, but she did apply some physical force to get him to the ground. Knight did not recall coming into contact with the wall, nor did he see Deputy Wright come in contact with the wall. Knight did not know how Deputy Wright sustained the injuries described at trial, and he did not see her vomiting. Knight sustained no injuries as a result of the incident.

When he was later interviewed about this incident, Knight claimed never to have touched Deputy Wright and that his body was never on top of her. Knight denied saying that he was “going home” when he and Deputy Wright first arrived in the receiving area, and he also denied resisting any deputies.

## **DISCUSSION**

### I. WAS KNIGHT IMPROPERLY CONVICTED OF BATTERY UPON A CUSTODIAL OFFICER UNDER SECTION 243.1?

Knight claims that his conviction of battery upon a custodial officer under section 243.1, was improper and must be reversed. Knight essentially argues that he was wrongly charged and tried under section 243.1 because the victim of the battery, Deputy

Wright, was a peace officer and not a “custodial officer” as defined by section 831, subdivision (a).<sup>3</sup> Respondent agrees, and we accept the concession.

Knight was charged in count 2 with a violation of section 243.1, which provides, in relevant part:

“When a battery is committed against the person of a custodial officer as defined in Section 831 of the Penal Code, and the person committing the offense knows or reasonably should know that the victim is a custodial officer engaged in the performance of his or her duties, the offense shall be punished by imprisonment ....”

By its terms, section 243.1 is specifically limited in scope to batteries committed against “custodial officers” as defined in section 831. Section 831, in turn, defines a “custodial officer” as “[1] a public officer, *not a peace officer*, [2] employed by a law enforcement agency of a city or county [3] who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility ....” (§ 831, subd. (a), italics added; see also *People v. Garcia* (1986) 178 Cal.App.3d 887, 894.) Only if Deputy Wright herself came under the specific definition of a “custodial officer” as set forth in section 831 can the conviction under section 243.1 be sustained.

Deputy Wright testified that she was a detention deputy with the Kern County Sheriff’s Department. Deputy Wright had been a detention deputy for approximately 11 years, and her duties included supervising and maintaining the safety and security of the inmates.<sup>4</sup>

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<sup>3</sup> As noted by respondent, Knight’s claim is couched in terms of an improper jury instruction claim, but the gist of his argument focuses on the purely legal question of whether a deputy sheriff of Kern County performing duties relating to custodial assignments, like Deputy Wright, can be considered a “custodial officer” for purposes of section 243.1.

<sup>4</sup> The jury was instructed in count 2, pursuant to CALCRIM No. 946, in relevant part that, in order to prove that Knight committed battery against a custodial officer in violation of section 243.1, the People had to prove, inter alia, that Deputy Wright “was a

Deputy Wright clearly satisfies the first part of the first element required under section 831. Under the California Constitution, the term “public officer” includes

“every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.” (Cal. Const., art. XX, § 3.)

Since Deputy Wright was an employee of the Kern County Sheriff’s Office, she was a “public officer.”

However, Deputy Wright does not satisfy the second part of the first element required under section 831, because she was also a “peace officer” within the definition of section 830.1, subdivision (c), which provides in relevant part,

“[a]ny deputy sheriff of the County of ... Kern ... who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer ....” (§ 830.1, subd. (c).)

Looking at the specific statutes at issue, section 831 makes clear that, although all custodial officers may be public officers, not all public officers are custodial officers.

In *In re Rochelle B.* (1996) 49 Cal.App.4th 1212 (*Rochelle B.*)<sup>5</sup>, the juvenile court sustained a wardship petition, finding true the allegation that the minor committed battery

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custodial officer performing the duties of a custodial officer ....” It was further instructed that “[a] custodial officer is someone who works for a law enforcement agency of a city or county, is responsible for maintaining custody of prisoners, and helps operate a local detention facility. A county jail is a local detention facility.”

<sup>5</sup> *Rochelle B.*, contains an extensive legislative 10-year history of, inter alia, sections 243.1, and 831, which it describes as having created “a maze of laws enhancing punishment for different classes of victims, including ‘custodial officers,’ with the apparent purpose of giving added protection to such potential victims,” but in the process has resulted in “an overlapping hodgepodge of statutes without any coherent definition of the classes of persons to be protected.” (*Rochelle B.*, *supra*, 49 Cal.App.4th at pp. 1217-1218.)

on a custodial officer under section 243.1. (*Rochelle B.*, *supra*, at p. 1215.) The minor challenged the finding on appeal, contending that a juvenile probation counselor was not a “custodial officer” within the meaning of sections 243.1 and 831. (*Rochelle B.*, *supra*, at p. 1215.) The Court of Appeal agreed, explaining that, under sections 830 and 830.5, any juvenile hall counselor is a “peace officer.” Because section 831 expressly excludes peace officers from the definition of a “custodial officer,” section 831 eliminated the possibility that a juvenile hall counselor could be considered a custodial officer. (*Rochelle B.*, *supra*, at p. 1221.) The court concluded that it was error to charge the juvenile with battery on a custodial officer under section 243.1, and it was error for the juvenile court to sustain the allegations of the wardship petition. (*Rochelle B.*, *supra*, at p. 1222.)

Here, too, because Deputy Wright comes within the definition of “peace officer,” she is precluded from being a “custodial officer” under section 831, and the section 243.1 conviction must be reversed. (*People v. Guiton* (1993) 4 Cal.4th 1116, 1129.)

## II. WAS KNIGHT IMPROPERLY CONVICTED OF BATTERY ON A PEACE OFFICER AND RESISTING A PEACE OFFICER?

Knight further argues that his convictions in counts 1 and 3 must also be reversed because the verdicts in those counts allowed the jury to find that Deputy Wright was a peace officer, while the verdict in count 2 relied on a finding that Deputy Wright was a custodial officer – mutually exclusive officer classifications which created inconsistent verdicts. Knight was convicted in count 1 of the lesser misdemeanor offense of battery on a peace officer without injury (§ 243, subd. (b)), and in count 3 of the lesser misdemeanor offense of resisting or obstructing a peace officer (§ 148, subd. (a)(1)). Respondent disagrees, as do we.

A violation of section 243, subdivision (b), as alleged in count 1, occurs when “a battery is committed against the person of a peace officer, [or] custodial officer ... engaged in the performance of his or her duties ....” (§ 243, subd. (b).) The distinction

between Deputy Wright's status as a peace officer or a custodial officer is immaterial for purposes of a violation of section 243, subdivision (b). Under that statute, the elements of the crime and the punishment that may be imposed are the same, regardless of whether the victim is a peace officer or a custodial officer. Be that as it may, the jury was instructed that, in order to find Knight guilty of the lesser included offense to count 2, the People had to prove, inter alia, that Deputy Wright "was a peace officer performing the duties of a detention deputy ...." In addition, the jury was instructed that "[a] person employed by the Kern County Sheriff's Department is a peace officer if she is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operation of county custodial facilities."

A violation of section 148, subdivision (a)(1), as alleged in count 3, occurs when a person "willfully resists, delays or obstructs any public officer, peace officer ... in the discharge or attempt to discharge any duty of his or her office or employment ...." (§ 148, subd. (a)(1).) The jury was instructed that, in order to find Knight guilty of the lesser included offense to count 3, the People had to prove, inter alia, that Deputy Wright "was a peace officer lawfully performing or attempting to perform her duties as a peace officer ...." In addition, the jury was instructed that "[a] person employed by the Kern County Sheriff's Department is a peace officer if she is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operation of county custodial facilities."

As noted earlier, Deputy Wright testified that she was a detention deputy with the Kern County Sheriff's Department. Deputy Wright had been a detention deputy for approximately 11 years, and her duties included supervising and maintaining the safety and security of the inmates. Thus, the allegations in counts 1 and 3 were properly instructed and Knight's convictions on those two counts are amply supported by the evidence. In addition, the convictions in counts 1 and 3, without the conviction in count 2 which we reverse, does not create an inconsistent verdict.

### III. DOES SECTION 654 PROHIBIT PUNISHMENT FOR BATTERY AGAINST A POLICE OFFICER AND RESISTING A PEACE OFFICER?

Knight contends section 654 prohibits against multiple punishments for both battery on a peace officer (§ 243, subd. (b)) and resisting a peace officer (§ 148, subd. (a)(1)), the lesser included offenses under counts 1 and 3, respectively, of which Knight was convicted, because both crimes were committed as part of “a single course of conduct.”

Section 654 provides in pertinent part:

“(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

“Whether a course of conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the ‘intent and objective’ of the actor. [Citation.] If all of the offenses are incident to one objective, the court may punish the defendant for any one of the offenses, but not more than one. [Citation.] If, however, the defendant had multiple or simultaneous objectives, independent of and not merely incidental to each other, the defendant may be punished for each violation committed in pursuit of each objective even though the violations share common acts or were parts of an otherwise indivisible course of conduct. [Citation.]” (*People v. Cleveland* (2001) 87 Cal.App.4th 263, 267-268; see also *People v. Martin* (2005) 133 Cal.App.4th 776, 781.)

“‘[A] course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment. [Citations.]’ [Citations.] This is particularly so where the offenses are temporally separated in such a way as to afford the defendant opportunity to reflect and to renew his or her intent before committing the next one, thereby aggravating the violation of public security and policy already undertaken.

[Citation.]” (*People v. Gao* (2000) 81 Cal.App.4th 919, 935.) “Thus, a finding that multiple offenses were aimed at one intent and objective does not necessarily mean that they constituted ‘one indivisible course of conduct’ for purposes of section 654. If the offenses were committed on different occasions, they may be punished separately.” (*People v. Kwok* (1998) 63 Cal.App.4th 1236, 1253.)

We review the trial court’s order imposing multiple sentences in the context of a section 654, subdivision (a) question for substantial evidence. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731.) In conducting substantial evidence analysis, we view the facts in the following fashion: “We must ‘view the evidence in a light most favorable to the respondent and presume in support of the order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]’ [Citation.]” (*People v. McGuire* (1993) 14 Cal.App.4th 687, 698.)

Knight argues counts 1 and 3 involved a “single act.” Hence, he contends count 3 must be stayed. In count 1, Knight was convicted of battery on a peace officer. Deputy Wright was named the victim in count 1. In count 3, Knight was convicted of resisting a peace officer. The named victim in count 3 was also Deputy Wright. At trial, in closing, the prosecutor argued that the act of head-butting Deputy Wright and resisting Deputy Wright was a single course of conduct.<sup>6</sup> We agree with Knight. The act of head-butting Deputy Wright, a battery, and immediately thereafter resisting arrest were subject to section 654, subdivision (a). The sentence imposed in count 3 for violating section 148 must therefore be stayed.

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<sup>6</sup> In closing, the prosecutor argued: “From the headbutt to taking her down, Tracy Wright down to the ground and hit her head, it’s all one act. And the resisting particularly is charged in a way that it’s the resisting against Tracy Wright. That is the criminal conduct you need to consider. It is not any resisting alleged by Senior Deputy Quiroz or any other detention deputy. Although there may have been resisting there, it’s relevant only to show that seconds after the headbutt and the taking to the ground the defendant was still resisting.”

#### IV. DID THE EXCLUSION OF KNIGHT'S GRANDMOTHER VIOLATE KNIGHT'S RIGHT TO A PUBLIC TRIAL?

Knight contends that his constitutional right to a public trial was violated when the trial court excluded his grandmother from the courtroom during his jury trial requiring reversal. We disagree.

##### *Procedural Background*

During jury selection in Knight's first trial, it was brought to the court's attention that Knight's grandmother, Mrs. Knight, who was present during jury selection, had made some inappropriate comments as prospective jurors were being dismissed. According to a bailiff, a prospective juror had approached him and said she overheard Mrs. Knight voice her approval when a white juror was excused. In a procedure agreed to by both parties, the prospective jurors were questioned, although none stated they had heard the comment.

In light of Mrs. Knight's behavior during jury selection in Knight's first trial, the trial court addressed Mrs. Knight before bringing in the prospective jurors at the start of Knight's second jury trial and admonished her to sit in a particular area of the courtroom and remain silent while there. But as jury selection proceeded, it was brought to the court's attention that one of the prospective jurors had spoken with Mrs. Knight. The issue was discussed with defense counsel, and the trial court suggested that Mrs. Knight be cautioned and provided a place to wait during recesses, to keep her from being in contact with the jury.

The following morning, the trial court questioned the prospective juror, who stated that he (the juror) struck up the conversation with the woman, thinking she was a juror. The woman did not say anything, other than to state that she was related to Knight. The prospective juror assured the court that he could and would remain objective. The trial court then addressed the rest of the prospective jurors and asked if anyone else had had any contact with "anybody who appears to be watching the trial or connected to the case

who is not a potential juror.” No one indicated that they had and the jury was impaneled without further incident.

After the trial court gave its initial instructions to the second jury panel, the court noticed Mrs. Knight, in the presence of the jury, attempting to speak to Knight’s defense counsel as he was preparing to leave the courtroom for a sidebar conference. Outside the presence of the jury, the trial court decided to exclude Mrs. Knight and addressed her, stating:

“Mrs. Knight, yesterday we had a report that one of the jurors was conversing with you and we asked him this morning and he said that he initiated a conversation with you and you did the right thing and explained you couldn’t discuss the case because you were related to the defendant.

“Now, this morning when counsel asked to take a recess, I observed you attempting to talk to [Knight’s] attorney[,] ... attempting to hold him there as we were going to convene in the back outside the jurors’ presence. After I walked out, I was informed that you were attempting to converse with him and it was perhaps loud enough or it was loud enough that the jury would hear.

“Mrs. Knight, we cannot have anything interfere with this courtroom and the record should also reflect at the first trial of this matter in November, I had admonished you because there was a report that when you were sitting close to the jury that jurors could hear you speaking and could hear you saying such things as jurors were being excused by attorneys’ peremptory challenges. They could hear you say things as such, ‘Good, there goes another white one.’ This behavior is inappropriate.

“After speaking with the one juror this morning, I was inclined to let you stay. After what I just observed at the break, Mrs. Knight, I’m sorry. I am going to have to ask that you not attend the trial and you will not be allowed inside and I will ask that you leave the Court facility because it is too small for our jurors not to have contact with you.”

In response to questioning by the trial court, no one on the jury indicated that Mrs. Knight’s behavior or defense counsel’s response to her would have an effect on their ability to remain fair and impartial.

### *Applicable Law and Analysis*

As explained in the recent case of *People v. Pena* (2012) 207 Cal.App.4th 944:

“[T]he United States Supreme Court “has made clear that the right to an open trial may give way in certain cases to other rights or interests, such as the defendant’s right to a fair trial .... Such circumstances will be rare, however, and the balance of interests must be struck with special care.” (*Waller [ v. Georgia* (1984)] 467 U.S. [39,] 45.) Consequently both the defendant’s and the public’s right may be subjected to reasonable restrictions that are necessary or convenient to the orderly procedure of trial, and the trial court retains broad discretion to control courtroom proceedings in a manner directed toward promoting the safety of witnesses. (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121.) [¶] ... In the case of a partial closure [(where some, but not all, spectators are asked to leave)], the Sixth Amendment public trial guarantee creates a “presumption of openness” that can be rebutted only by a showing that exclusion of the public was necessary to protect some “higher value” such as the defendant’s right to a fair trial .... (See *Waller, supra*, 467 U.S. at pp. 44-45.) When such a “higher value” is advanced, the trial court must balance the competing interests and allow a form of exclusion no broader than needed to protect those interests. (*Ibid.*) Specific findings are required to enable a reviewing court to determine the propriety of the exclusion. (*Id.* at p. 45.) ... [¶] The identity of the spectator sought to be excluded is highly relevant in a partial closure situation.... The application of the above principles and the issue whether an accused has been denied his constitutional right to a public trial cannot be determined in the abstract, but must be determined by reference to the facts of the particular case. [Citation.]’ [Citations.]” (*Pena, supra*, 207 Cal.App.4th at p. 949, fn. omitted.)

Thus, to justify complete closure of a trial or portion thereof, four criteria must be met: (1) there must be an overriding interest that is likely to be prejudiced; (2) the closure must be narrowly tailored, i.e., no broader than necessary to protect that interest; (3) the trial court must consider reasonable alternatives to closing the proceeding; and (4) the trial court must make findings adequate to support the closure and allow a reviewing court to determine whether the closure was proper. (*Waller v. Georgia, supra*, 467 U.S. at p. 48; *Press-Enterprise Co. v. Superior Court* (1984) 464 U.S. 501, 510; *People v. Woodward* (1992) 4 Cal.4th 376, 383.)

The trial court identified the interests that, in its opinion, required the exclusion of Mrs. Knight: the right to a fair trial and an orderly trial process. The trial court had witnessed Mrs. Knight's disruptive behavior in Knight's first trial, to the point that it suggested that defense counsel provide Mrs. Knight with a place during recesses to keep her from having any contact with the prospective jurors. When the second trial began, the trial court specifically instructed Mrs. Knight on where to sit in the courtroom and how to behave in the presence of the jury, admonishing her "not to make any comments or even sounds disagreeing or agreeing with what the attorneys might say." Despite the admonition, Mrs. Knight continued to be disruptive by attempting to communicate loudly with defense counsel in the jury's presence.

The trial court's exclusion of Mrs. Knight from the courtroom under the circumstances was a reasonable one and did not violate Knight's right to a public trial.

### **DISPOSITION**

Knight's conviction for felony battery against a custodial officer in count 2 violation of section 243.1 is reversed and the sentence imposed in count 3 is stayed. Because count 2 was selected as the principal term, we remand for resentencing to permit the trial court to reconsider the entire sentencing scheme. (*People v. Burns* (1984) 158 Cal.App.3d 1178, 1183-1184; *People v. Savala* (1983) 147 Cal.App.3d 63, 70, overruled on other grounds in *People v. Foley* (1985) 170 Cal.App.3d 1039, 1044, 1046-1047.) In all other respects, the judgment is affirmed.

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Franson, J.

WE CONCUR:

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Levy, Acting P.J.

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Gomes, J.