

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION SIX

People v. Cabada

2d Crim. No. B315418 · No. B315418 · Decided March 24, 2025

SUMMARY

The California Court of Appeal reconsidered its prior decision after transfer from the California Supreme Court in light of *People v. Lynch* and *Erlinger v. United States*. The court held that substantial evidence supported Jose Manuel Cabada’s second degree robbery conviction and that any Senate Bill No. 567 sentencing error was harmless beyond a reasonable doubt. The court affirmed the judgment and certified the opinion for publication.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Six
WRITING FOR THE COURT	Yegan, J.; Gilbert, P. J.; Baltodano, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Six
DECIDED	March 24, 2025
DOCKET	B315418
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a judgment following jury convictions for second degree robbery, evading an officer, and unlawful driving or taking of a vehicle. After the California Supreme Court transferred the matter for reconsideration in light of <i>People v. Lynch</i> and <i>Erlinger v. United States</i> , the Court of Appeal vacated its prior opinion, considered supplemental briefing, and affirmed the judgment.
STANDARD OF REVIEW	For sufficiency of the evidence, the court reviews the entire record in the light most favorable to the judgment and asks whether substantial evidence supports a reasonable finding of guilt beyond a reasonable doubt. The court neither reweighs evidence nor reevaluates witness credibility. For sentencing error under Penal Code section 1170, subdivision (b), the court applied the harmless-beyond-a-reasonable-doubt standard described in <i>Lynch</i> .
PRECEDENTIAL VALUE	Published and certified for publication

TOPICS

sentencing

criminal procedure

evidence

standard of review

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PRACTICE AREAS

criminal law

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evidence

QUESTIONS PRESENTED

1. Whether substantial evidence supported Cabada's second degree robbery conviction, particularly whether the evidence established that the clerk was actually placed in fear.
2. Whether Senate Bill 567, Penal Code section 1170, subdivision (b), Erlinger, and Lynch required remand for resentencing because the trial court relied on aggravating circumstances that had not been found true by a jury or established through a certified record of conviction.
3. Whether the record clearly indicated that the trial court would have imposed the upper term under the sentencing discretion available after Senate Bill 567.

HOLDINGS

1. Substantial evidence supported the jury's finding that the convenience-store clerk was actually afraid and that the fear facilitated the robbery. California robbery law does not require the victim's fear to be objectively reasonable; the relevant inquiry is whether the victim subjectively experienced fear.
2. Remand was not required because the trial court's reliance on aggravating factors not found true by a jury or established by certified records was harmless beyond a reasonable doubt. A jury would have found beyond a reasonable doubt that Cabada had a significant record with numerous and similar prior convictions and that his probation or parole performance had been poor.
3. The record clearly indicated that the trial court would have imposed the upper term even under the more limited sentencing discretion created by Senate Bill 567; therefore, remand for resentencing was unwarranted.

KEY QUOTATIONS

“what matters is whether the victim in this case was subjectively in fear, not whether a hypothetical and objective ‘reasonable person’ standing in the victim’s shoes would have been afraid.” (p. 5)

“a sentence imposed under former section 1170[, subdivision] (b), must be reversed and remanded unless the reviewing court concludes beyond a reasonable doubt that a jury, applying that same standard, would have found true all of the aggravating facts upon which the court relied to conclude the upper term was justified, or that those facts were otherwise proved true in compliance with the current statute.” (p. 7)

“We conclude the trial court’s statements “clearly indicate” it would have imposed the upper term even “under the weight of the presumptive middle term maximum sentence that currently exists.”” (p. 9)

FACTUAL BACKGROUND

During the early morning hours of May 30, 2020, Cabada confronted two men near a car dealership, chased one while carrying a pole saw, and drove away in the other man's car. Shortly afterward, at a convenience store, he grabbed money from the clerk's hand, knocked down a plexiglass barrier, demanded additional items, raised a gallon milk jug as if to strike or throw it, and took money from a charity container. The clerk testified that he was intimidated and complied because he feared Cabada would become violent; Cabada then fled from police at high speed and crashed the stolen car.

PROCEDURAL HISTORY

A Ventura County jury convicted Cabada on all three charged felony counts. The trial court denied his request to dismiss a prior strike conviction and imposed an aggregate sentence of 12 years eight months, including an upper-term robbery sentence doubled under the Three Strikes law. The Court of Appeal initially affirmed in a nonpublished opinion, but the California Supreme Court granted review and transferred the case on December 11, 2024, directing reconsideration under Lynch and Erlinger. The Court of Appeal vacated its prior decision and again affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Bolin, 18 Cal. 4th 297, 331 (1998)
- Jackson v. Virginia, 443 U.S. 307, 319-320 (1979)
- People v. Jennings, 50 Cal. 4th 616, 638-639 (2010)
- People v. Morehead, 191 Cal. App. 4th 765, 772, 774-775 (2011)
- People v. Cuevas, 89 Cal. App. 4th 689, 698 (2001)
- People v. Mullins, 19 Cal. App. 5th 594, 605 (2018)
- People v. Collins, 65 Cal. App. 5th 333, 341 (2021)
- People v. Iniguez, 7 Cal. 4th 847 (1994)
- People v. Lynch, 16 Cal. 5th 730, 742-743, 761, 777 (2024)
- Erlinger v. United States, 602 U.S. 821, 838 (2024)
- People v. Gutierrez, 58 Cal. 4th 1354, 1390-1391 (2014)
- People v. Flores, 9 Cal. 5th 371, 432 (2020)
- People v. Salazar, 15 Cal. 5th 416, 431 (2023)
- People v. Superior Court (Romero), 13 Cal. 4th 497 (1996)
- People v. Cabada, No. B315418 (Cal. Ct. App. Jan. 17, 2023) (nonpublished op.)