

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JASPER LEE BAGSBY,

Defendant and Appellant.

F065989

(Kern Super. Ct. No. BF141750C)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Eric Bradshaw, Judge.

Jeffrey S. Kross, 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 Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

## **INTRODUCTION**

Defendant Jasper Lee Bagsby was convicted of kidnapping and torturing Ofelio Castrejon. Bagsby raises several issues regarding the severity of Castrejon's injuries. We reject those contentions.

Defendant also submits that the prison sentence imposed for his torture conviction should be stayed pursuant to Penal Code section 654,<sup>1</sup> and that the trial court erred in imposing a parole revocation fine. The Attorney General concedes both issues. We will modify the judgment accordingly and otherwise affirm.

## **PROCEDURAL BACKGROUND**

In an information filed July 5, 2012, defendant was charged with two counts of kidnapping Ofelio Castrejon for ransom (counts I and II – § 209, subd. (a)) and one count of torture (count III – § 206.)<sup>2</sup> As to the kidnapping counts, it was alleged that Castrejon either suffered bodily harm or death, or was intentionally confined in a manner which exposed him to a substantial likelihood of death. (§ 209, subd. (a).) As to all three counts, it was alleged that a principal personally used a firearm. (§ 12022.53, subds. (b) & (e)(1)), and that defendant committed the crimes for the benefit of, at the direction of, or in association with a criminal street gang. (§ 186.22, subd. (b)(1).)

One of the kidnapping counts (i.e., count II) was dismissed before trial at the prosecution's request. A jury convicted defendant of kidnapping for ransom and torture, and found all of the special allegations true.

The court sentenced defendant to life without the possibility of parole on count I, plus 10 years for the firearm enhancement; and a consecutive term of 7 years to life on count 3, plus 10 years for the firearm enhancement. The court also imposed various

---

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

<sup>2</sup> Codefendants Genoveva Ronquillo and Vincent Sterling were also charged with various crimes in the same information.

fines, including a \$240 parole revocation fine pursuant to section 1202.45, and suspended the fine pending successful completion of parole.

## **TRIAL EVIDENCE**

### Castrejon's Testimony

The alleged victim, Ofelio Castrejon, testified at trial. Castrejon admitted that he had previously been arrested for possessing “nine or ten pounds of marijuana.” He also had a prior misdemeanor arrest for marijuana possession.

Castrejon testified that when he arrived at his home on the night of April 23, 2012, several<sup>3</sup> men approached him wearing ski masks and holding guns. They told Castrejon to “get down,” but he refused. The men began hitting and kicking Castrejon. Castrejon tried to grab one of the guns. One of the men told Castrejon to let go of the gun, or he would shoot. Castrejon struggled with the men for “maybe” eight or nine minutes. One of the men hit Castrejon in the head with a gun. Castrejon eventually lost consciousness.

The men dragged Castrejon into a “grayish/brownish vehicle.” Castrejon was put in the backseat with a beanie over his face and his hands bound with rope.

The vehicle eventually made a stop at a payphone. The men asked Castrejon if he knew someone who would want to save his life. He dialed the phone number of his boss, Omar Rodriguez. Castrejon told Rodriguez that he had “just got beat up and kidnapping [sic].” He let Rodriguez know that the kidnappers wanted money. At that point, “they” took the phone from Castrejon and said they wanted \$50,000.

Castrejon went back into the vehicle. Eventually, the men had Castrejon get out and lie down on a small bed or couch. The men allowed Castrejon to speak on the phone with Rodriguez on multiple occasions to let him know Castrejon was “all right.” The men told Castrejon they would kill him if he was not able to get someone to “come up

---

<sup>3</sup> When asked how many men approached him, Castrejon testified: “If I’m not mistaken, I was able to see three.”

with the money.” They also threatened to “start cutting something off” to “let them know that they weren’t playing.”

Eventually the garage door opened and a vehicle entered. The men put Castrejon – who was still blindfolded – in the vehicle. While in the vehicle, one of the men punched Castrejon in the head. After a “long ride,” Castrejon was rescued by law enforcement personnel investigating the kidnapping.

At some point during the ordeal, the men had taken Castrejon’s wallet, which contained his social security card and \$900.

#### Law Enforcement Investigation

Detective Andrew Avila and his partner, both with the Kern County Sheriff’s Office, were involved in the investigation of Castrejon’s kidnapping. They were assigned to Rodriguez’s residence to intercept any additional ransom calls. Detective Avila looked at the call log on Rodriguez’s phone and saw 11 incoming calls had been received between 12:26 a.m. and 4:27 a.m. The detective set up a digital recorder to record future incoming calls made to Rodriguez’s phone. Several calls were made to Rodriguez’s phone and recorded by the detectives. Some of those calls were traced to a cell phone number belonging to Genoveva Ronquillo, one of the codefendants.

Deputy Darren Wonderly was conducting surveillance for law enforcement’s investigation of the kidnapping. At approximately 10:00 a.m., Wonderly began trailing an Oldsmobile Bravada. The vehicle went to a residence, then drove to Highway 99. It made several stops before pulling in front of a CVS pharmacy. Wonderly, along with other members of law enforcement, stopped the vehicle and detained all of its occupants, including Bagsby. Castrejon was removed from the rear cargo area of the vehicle. Wonderly testified that Castrejon “appeared ... beat up. He was bloody and had puffy, black eyes.” Castrejon said he had a cut on his head from when one of the men had hit him. Castrejon also testified that the men caused an injury to his lip and bruises, and that

he had a “terrible” headache for “a couple days.” Castrejon did not need stitches, took ibuprofen and did not fill a pain medication prescription because he could not afford it.

A handgun was recovered on the floorboard of the right rear passenger side of the vehicle.

## DISCUSSION

### I.

#### **THERE WAS SUFFICIENT EVIDENCE CASTREJON SUFFERED BODILY HARM UNDER SECTION 209, SUBDIVISION (a)**

The jury convicted defendant of kidnapping Castrejon for ransom. The jury also found that Castrejon either (1) suffered bodily harm while subjected to the kidnapping or (2) “was intentionally confined in a manner which exposed him to a substantial likelihood of death.” This finding subjected defendant to punishment by imprisonment for life without the possibility of parole. (§ 209, subd. (a); see *People v. Serrano* (1992) 11 Cal.App.4th 1672, 1675.)

Defendant contends there was insufficient evidence to support the jury’s finding that Castrejon suffered bodily harm.<sup>4</sup> We disagree.

A victim suffers “bodily harm” under section 209 when there is “1) a substantial or serious injury to the body of the kidnaped victim, 2) by application of a physical force, 3) beyond that necessarily involved in the forcible kidnaping. [Citations.]” (*People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685; *People v. Chacon* (1995) 37 Cal.App.4th 52, 59.) Defendant contends these requirements were not met because Castrejon did not suffer substantial or serious injuries, and the force used by the kidnappers was not more significant than the force necessarily involved in all forcible kidnappings. We reject both contentions.

---

<sup>4</sup> Because we conclude there was substantial evidence Castrejon suffered bodily harm under section 209, we need not address defendant’s contention that the evidence did not support a finding that Castrejon was intentionally confined in a manner exposing him to a substantial likelihood of death.

There was sufficient evidence Castrejon's suffered substantial injuries. He was attacked in his driveway by three men with guns. While Castrejon struggled, the men hit and kicked him for "maybe eight minutes, nine minutes." One of the men hit Castrejon in the head with a gun, and he lost consciousness. When Castrejon was eventually rescued, he was bloody, bruised and had "puffy, black eyes."<sup>5</sup> He suffered from "terrible headache[s]" for multiple days.

We also reject defendant's contention that virtually all of the force used was necessary to the kidnapping. Three men with guns physically attacked Castrejon while he was alone. The jury could have reasonably concluded from this evidence that attacking Castrejon for several minutes was not necessary to effect the kidnapping.

## II.

### **THERE WAS SUFFICIENT EVIDENCE OF GREAT BODILY INJURY**

In a similar argument, defendant contends there was insufficient evidence Castrejon suffered great bodily injury as required for a conviction on count three. (See §§ 206, 12022.7, subd. (f).) We disagree.

Torture occurs when the defendant (1) inflicts great bodily injury (as defined in § 12022.7) upon the person of another (2) with the intent to cause cruel or extreme pain and suffering (3) for the purpose of revenge, extortion, persuasion, or for any sadistic purpose. (§ 206.) "The crime of torture does not require any proof that the victim suffered pain." (*Ibid.*)

For purposes of the torture statute, great bodily injury means "a significant or substantial physical injury." (§ 12022.7, subd. (f).) As discussed above, Castrejon's injuries were substantial. After being attacked in his driveway for several minutes by armed men, and being hit in the head with a gun, Castrejon lost consciousness. When Castrejon was eventually rescued, he was bloody, bruised and had "puffy, black eyes"

---

<sup>5</sup> Castrejon was also hit while being driven around by the kidnappers.

and suffered from “terrible headache[s]” for multiple days. There was sufficient evidence Castrejon’s injuries were “substantial.”

**III.**

**THE JUDGMENT MUST BE MODIFIED**

Defendant contends his sentence on count III should be stayed pursuant to section 654, and the Attorney General agrees. Defendant also contends that his parole revocation fine should be stricken because he was sentenced to life *without* the possibility of parole, and the Attorney General agrees.

We accept both concessions and will order the judgment modified accordingly.

**DISPOSITION**

The judgment is modified to reflect a stay of the punishment imposed for defendant’s conviction on count III. (§ 654.) The \$240 parole revocation fine is stricken. The trial court is directed to have certified copies of the amended abstract of judgment transmitted to the appropriate parties and entities. In all other respects, the judgment is affirmed.

---

Poochigian, J.

WE CONCUR

---

Cornell, Acting P.J.

---

Kane, J.