

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO BUSTOS CHAVEZ,

Defendant and Appellant.

G045400

(Super. Ct. No. 10WF0339)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed as modified.

Martin Kassman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton, Deputy Attorney General, for Plaintiff and Respondent.

THE COURT:\*

Appellant Fernando Bustos Chavez was charged with kidnapping, kidnapping for ransom, two counts of second degree robbery, unlawfully taking a vehicle, and a “violation of Section 245(a)(1) of the Penal Code (AGGRAVATED ASSAULT), a FELONY.”<sup>1</sup> According to count four in the amended information, Chavez “did willfully and unlawfully commit an assault upon the person of [the victim] by means of force likely to produce great bodily INJURY.” Prior convictions were also alleged. Chavez entered a plea of not guilty.

Chavez was one of three passengers in a Honda stopped at a stop sign when it was hit from behind by a car driven by the victim. The victim, who admitted he had been drinking before the accident, testified that when he got out of his car, he was surrounded by three males, one of whom was Chavez. Chavez hit the victim in the face, injuring him. The men took the victim to his uncle’s house, where they also assaulted the uncle. There was no evidence that a weapon was used.

Following a trial, the jury returned a guilty verdict on count four for “the crime of AGGRAVATED ASSAULT- FORCE LIKELY TO PRODUCE GREAT BODILY INJURY a Felony, in violation of Section 245(a)(1) of the Penal Code of the State of California, as charged in COUNT 4 of the Amended Information.”

Chavez was sentenced to a total term of 18 years, including a two-year term on count four of the amended information. However, instead of identifying count four as aggravated assault, the abstract of judgment identifies Chavez’s conviction as “PC 245(a)(1) Assault with deadly weap[on].”

In the only issue raised on appeal, Chavez contends the abstract of judgment must be corrected to reflect that his conviction in count four was for assault by

---

\* Before Bedsworth, Acting P. J., Aronson, J., and Fybel, J.

<sup>1</sup> All further references are to the Penal Code.

means of force likely to produce great bodily injury. The Attorney General concedes the issue, and we agree the abstract of judgment must be corrected to accurately reflect Chavez's conviction.

At the time of the offense in 2009, subdivision (a)(1) of section 245 read, "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment."

In a factually similar case involving a conviction for section 245(a)(1), *People v. Delgado* (2008) 43 Cal.4th 1059, the court explained that failing to prepare the record with "utmost care and sensitivity" may have "substantial penal consequences." (*Id.* at p. 1072.) Because assault with a deadly weapon is a serious felony (§ 1192.7, subd. (c)(11)) and assault by means of force likely to produce great bodily injury is not, "it is necessary that the abstract of judgment specify, with scrupulous accuracy, the crime of which the defendant was actually charged and convicted." (*People v. Delgado, supra*, 43 Cal.4th at p. 1072.)

Based on the amended information, the verdict rendered by the jury and signed by the foreperson, and the fact that no evidence of a weapon was presented during the trial, it is clear that Chavez's conviction in this case was for aggravated assault by means of force likely to produce great bodily injury and not assault with a deadly weapon as reported in the abstract of judgment.

The superior court is ordered to correct the abstract of judgment to reflect that Chavez was convicted of assault by means of force likely to produce great bodily injury as alleged in count four of the second amended information and transmit forthwith a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.