Filed 5/17/12 P. v. Chacon CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JESSE JUNIOR CHACON et al., Defendants and Appellants.	B227561 (Los Angeles County Super. Ct. No. SA070576)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cynthia Rayvis, Judge. Affirmed as modified and remanded, with directions.

Kravitz Law Office, Jeffrey Kravitz and Efren B. Williams, under appointment by the Court of Appeal, for Defendants and Appellants.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Lawrence M. Daniels and Colleen M. Tiedemann, Deputy Attorneys General, for Plaintiff and Respondent.

Appellants Jesse Junior Chacon and David Chacon challenge their convictions for kidnapping to commit robbery, kidnapping during a carjacking, carjacking, and robbery.[1] They maintain that the prosecution engaged in misconduct, including the suppression of exculpatory evidence, and that the trial court committed evidentiary, instructional, and sentencing error. We reject their challenges, with the exception of the contentions regarding their sentences (Pen. Code, § 654). We modify appellants' sentences to correct the errors, and affirm the judgments as modified.

RELEVANT PROCEDURAL HISTORY

On June 26, 2009, an information was filed charging appellants with kidnapping to commit robbery (count 1; Pen. Code, § 209, subd. (b)(1)), carjacking (count 2; Pen. Code, § 215, subd. (a)), and robbery (count 3; Pen. Code, § 211).[2] Accompanying the charges were allegations that David had suffered a prior felony conviction for purposes of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and other statutes (§§ 667, subd. (a)(1), 667.5, subd. (b)). Appellants pleaded not guilty to all the counts, and David denied the special allegations. During the jury trial, the trial court amended the information to add a charge of kidnapping (count 4; § 209.5, subd. (a)). Appellants pleaded not guilty to the additional charge.

On May 21, 2010, the jury found appellants guilty as charged. After finding the prior conviction allegations against David to be true, the trial court sentenced

---

[1] Because appellants share their surname, we generally refer to them by their first names.

[2] All further statutory citations are to the Penal Code, unless otherwise indicated.

him to a total term of 17 years plus life in prison. The court sentenced Jesse to a total term of six years plus life in prison.

FACTUAL BACKGROUND

A. *Prosecution Evidence*

The prosecution's principal witnesses were Fernando Tlaxcalteco, the victim of the offenses charged against appellants, and Jorge Fausto, who participated in the offenses and testified pursuant to a plea agreement. Their testimony, coupled with other evidence, supported the following version of the underlying events: In 2008 and 2009, Tlaxcalteco provided services as a delivery van driver to Same Day Transportation, which distributes pharmaceutical drugs throughout Southern California.[3] After picking up drugs at a warehouse in Valencia, Tlaxcalteco would deliver them to drugstores in Santa Monica, Marina de Rey, and Inglewood. Tlaxcalteco knew Fausto, who worked for a period at a pharmacy on his route. Prior to the offenses charged against appellants, Fausto once asked Tlaxcalteco to give him drugs from the van in exchange for money, but Tlaxcalteco refused to do so.

In 2008, Fausto was employed as a pharmacy technician at the Regency Square Pharmacy in Santa Monica. In November 2008, his employers fired him when he admitted having stolen drugs from the pharmacy. Later, in early February 2009, Fausto talked with David regarding their respective financial troubles. When David learned that Fausto knew the Regency Square Pharmacy's access codes for ordering drugs by computer, they decided to order some drugs and steal them by

---

[3] Tlaxcalteco was employed by a vendor that supplied drivers to Same Day Transportation.

taking the delivery vehicle. Fausto testified that he did not agree to any kidnapping, carjacking, or use of force to take the vehicle.

On February 12, 2009, Fausto used the access codes to order significant amounts of Vicodin, pseudoephedrine, and other items to be delivered to the Regent Square Pharmacy the next day. Fausto also phoned Tlaxcalteco to confirm that he would be making the delivery. According to Fausto, Tlaxcalteco was unaware of the plan to steal the drugs. Fausto met with David and Jesse at a motel, where Fausto described the delivery van; later, Fausto drove David to the first pharmacy on Tlaxcalteco's route and showed him where the van was likely to park.

At approximately 5:30 a.m. on February 13, 2009, Tlaxcalteco left the Valencia warehouse to make his deliveries. His van contained drugs worth more than $83,000. When Tlaxcalteco parked near the first pharmacy on his route and began to leave the van, Jesse approached him. Jesse ordered him into the van and told him to do nothing. As Jesse gave Tlaxcalteco the appearance of being armed, Tlaxcalteco obeyed, getting into the van's front passenger seat.

After Jesse began driving, he demanded Tlaxcalteco's cell phone, removed its battery, and returned the phone. Jesse also took Tlaxcalteco's identification card. According to Tlaxcalteco, Jesse conversed in English on his own cell phone. Because Tlaxcalteco did not understand English, he did not know what Jesse said.[4] After an interval, Jesse stopped the van, ordered Tlaxcalteco out, and drove away.[5]

---

[4] Cell phone records established that calls were made between Jesse's and David's cell phones during the commission of the crimes and shortly thereafter, from locations corresponding to the area of the carjacking and the route leading to Bell Gardens.

[5] Tlaxcalteco later identified Jesse in a photographic lineup as looking like the man who kidnapped him. At trial, Tlaxcalteco identified the kidnaper as Jesse or David, explaining that "they look a lot like each other."

At approximately 8:30 a.m., David told Fausto by phone that both the van and Tlaxcalteco had been taken, and that Tlaxcalteco was "okay." Fausto met David and Jesse in Bell Gardens, and they unloaded the van. Jesse then drove the van to another location in Bell Gardens and abandoned it.

Approximately two weeks later, on February 28, 2009, Santa Monica Police Department Detective Michael Bambrick interviewed Fausto. After Brambrick told Fausto that the access codes used to order the stolen drugs were potentially traceable to him, Fausto admitted that he had placed the orders and participated in the robbery.[6] Fausto also identified David and Jesse in photographic lineups. On March 3, 2009, at Bambrick's request, Fausto engaged in a recorded phone conversation with David.[7]

On March 6, 2009, Bambrick interviewed Jesse. During the interview, Jesse admitted that he had driven the stolen van, but maintained that he had done so only because some "professionals" unknown to him had threatened to kill his family. According to Jesse, they had forced him to wear a hood at various times when they talked to him. Shortly afterward, Bambrick interviewed David, who admitted no involvement in the crime, but suggested that he could locate the stolen drugs.[8]

Fausto was charged with the embezzlement of drugs from the Regent Square Pharmacy in November 2008 and the carjacking, kidnapping, and robbery of Tlaxcalteco in February 2009. On May 5, 2010, shortly before testifying at trial, Fausto entered into a plea agreement regarding the charges. Under the agreement, Fausto pleaded guilty to the November 2008 embezzlement and February 2009

---

[6] A video recording of the interview was played to the jury.

[7] An audio recording of the conversation was played to the jury.

[8] Video recordings of Jesse's and David's interviews were played to the jury.

robbery, and agreed to testify truthfully at the underlying trial. The remaining charges were to be dismissed.

B. *Defense Evidence*

Edward Dixon, a telephone network engineer, testified that Fausto's cell phone made a 15-minute call to Tlaxcalteco's phone on February 4, 2009, an 8-minute call to Tlaxcalteco's phone on February 11, 2009, and several phone calls to David's phone on February 11, 12, and 13, 2009.

DISCUSSION

Appellants contend (1) that the prosecution withheld exculpatory evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83, 87 (*Brady*), (2) that the trial court improperly limited the cross-examination of Fausto, (3) that the trial court made a misstatement of law to the jury, (4) that there was prosecutorial misconduct, and (5) that the trial court erred in imposing sentence. For the reasons discussed below, we discern reversible error only in connection with appellants' sentences.

A. *Exculpatory Evidence*

Appellants contend the prosecutor breached her duty under *Brady* to disclose that Fausto tried to obtain drugs from Tlaxcalteco before the occurrence of the Febuary 13, 2009 offenses. We disagree.

1. *Governing Principles*

The United States Constitution obliges a prosecutor to disclose exculpatory material evidence to the defendant in a criminal case. (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 377.) Under *Brady*, "the suppression by the prosecution of

evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady, supra*, 373 U.S. at p. 87.) The prosecutor must disclose so-called "'"*Brady* material"'" held by police officers acting on the prosecution's behalf, even without a request from the defendant. (*People v. Salazar* (2005) 35 Cal.4th 1031, 1043 (*Salazar*).)

Our Supreme Court has explained: "'There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.' [Citation]. Prejudice, in this context, focuses on 'the materiality of the evidence to the issue of guilt or innocence.' [Citations.] Materiality, in turn, requires more than a showing that the suppressed evidence would have been admissible [citation], that the absence of the suppressed evidence made conviction 'more likely' [citation], or that using the suppressed evidence to discredit a witness's testimony 'might have changed the outcome of the trial' [citation]. A defendant instead 'must show a "reasonable probability of a different result."' [Citation.]" (*Salazar*, *supra*, 35 Cal.4th at p. 1043.)

2. *Underlying Proceedings*

During the prosecutor's direct examination, Tlaxcalteco testified that Fausto once called him by phone and offered money for drugs from Tlaxcalteco's van. According to Tlaxcalteco, he refused the offer. On cross-examination, Tlaxcalteco stated that the offer occurred before the February 2009 robbery. Later, during cross-examination by Jesse's counsel, Fausto acknowledged that he had made the offer and that Tlaxcalteco had rejected it. In addition, Fausto stated that he had

described the offer to Detective Bambrick approximately a week before Fausto testified at trial.

Immediately following this testimony, appellants' counsel objected that the prosecutor had never disclosed Bambrick's interview with Fausto regarding the offer. The prosecutor replied that in describing Bambrick's meeting with Fausto to appellants' counsel, she had apparently overlooked Fausto's remarks concerning the offer. The trial court then directed Jesse's counsel to speak with Bambrick during a recess in order to learn Fausto's description of the offer. After the recess, during further cross-examination by Jesse's counsel, Fausto testified that he had made the offer to Tlaxcalteco by phone. In addition, Fausto denied telling Bambrick that he made a face-to-face offer to Tlaxcalteco in the fall of 2008.

Shortly afterward, appellants' counsel sought a mistrial, contending that Bambrick told them that Fausto had characterized the offer as "face-to-face" when he described it to Bambrick. The trial court conducted an evidentiary hearing, during which Bambrick testified that in talking to Fausto, he had formed the "impression" that the offer occurred during a face-to-face meeting between Fausto and Tlaxcalteco. Bambrick further stated that the impression may simply have been an "assumption on my part." Bambrick also acknowledged that he had characterized the offer as "face-to-face" when he related Fausto's remarks to appellants' counsel. In denying the motion for a mistrial, the trial court found no *Brady* violation.

3. *Analysis*

We agree that no *Brady* violation occurred. To the extent appellants contend that the prosecutor did not make a timely disclosure that Fausto told Bambrick that he made an offer in *some* manner to Tlaxcalteco, the omission did not involve

evidence "'favorable to the accused.'" (*Salazar*, *supra*, 35 Cal.4th at p. 1043, quoting *Strickler v. Green* (1999) 527 U.S. 263, 281-282.) As both Tlaxcalteco and Fausto testified that Fausto phoned Tlaxcalteco and offered him money for drugs, the fact that Fausto informed Bambrick regarding the existence of the offer neither exculpated appellants nor impeached Fausto or Tlaxcalteco. Furthermore, prejudice from the omission (if any) was cured when the trial court gave Jesse's counsel an opportunity to interview Bambrick before resuming his cross-examination of Fausto.

To the extent appellants contend that the prosecutor did not make a timely disclosure that Fausto described the offer as "face-to-face" when he spoke to Bambrick, the evidence before the trial court supports the reasonable inference that Fausto did *not* characterize the offer in this manner. However, even if Fausto described the offer as "face-to-face" when he talked to Bambrick, the discrepancy between his remarks to Bambrick and his testimony at trial cannot be regarded as material impeachment evidence, as the manner in which the offer was communicated had little or no bearing on Fausto's credibility. Accordingly, the prosecutor did not breach her duties under *Brady*.

For the same reasons, we reject appellants' related contention that the trial court improperly denied their motion for a mistrial based on the purported *Brady* error. As explained above, the court properly denied the motion for want of a showing of "injustice." (*People v. Slocum* (1975) 52 Cal.App.3d 867, 884 [court may deny mistrial motion when "satisfied that no injustice has resulted or will result from the events of which the complaint ensues"].)

B. *Cross-Examination of Fausto*

Appellants contend that the trial court improperly limited their cross-examination of Fausto, who elected to invoke his privilege against self-incrimination with respect to inquiries regarding his arrest in South Gate in August 2008 for the sale of drugs. In addition, appellants contended that the court was obliged to strike all of Fausto's testimony because he invoked the privilege. We reject these contentions.

The United States and California Constitutions entitle defendants to confront witnesses against them through cross-examination. (*People v. Jennings* (1991) 53 Cal.3d 334, 372; *People v. Greenberger* (1997) 58 Cal.App.4th 298, 349.) Nonetheless, "'[t]his does not mean that an unlimited inquiry may be made into collateral matters; the proffered evidence must have more than "slight-relevancy" to the issues presented.' [Citation.]" (*People v. Jennings*, *supra*, 53 Cal.3d at p. 372, quoting *People v. Northrop* (1982) 132 Cal.App.3d 1027, 1042, disapproved on another ground in *People v. Smith* (1984) 35 Cal.3d 798, 808.) Thus, the constitutional rights in question do not prevent the trial court from imposing reasonable limits on defense counsel's cross-examination based on concerns about relevance, prejudice, and other matters. (*People v. Box* (2000) 23 Cal.4th 1153, 1203, disapproved on another ground in *People v. Martinez* (2010) 47 Cal.4th 911, 948, fn. 10; *People v. Greenberger*, *supra*, 58 Cal.App.4th at p. 350.)

Furthermore, "[i]t is a fundamental principle of our law that witnesses may not be compelled to incriminate themselves, and the scope of a witness's privilege is liberally construed. [Citations.] 'To invoke the privilege, a witness need not be guilty of any offense; rather, the privilege is properly invoked whenever the witness's answers "would furnish a link in the chain of evidence needed to prosecute" the witness for a criminal offense.'" (*People v. Williams* (2008) 43 Cal.4th 584, 613-614, quoting *People v. Cudjo* (1993) 6 Cal.4th 585, 617.)

Notwithstanding the defendant's right to confront witnesses, striking the testimony of a nonparty witness who invokes the privilege during cross-examination is required only when the invocation prevents inquiries regarding the witness's "direct" testimony, as opposed to "purely collateral matters" related to the witness's credibility. (*Board of Trustees v. Hartman* (1966) 246 Cal.App.2d 756, 764; see *United States v. Seifert* (9th Cir. 1980) 648 F.2d 557, 561 ["Where a witness asserts a valid privilege against self-incrimination on cross-examination, all or part of that witness's testimony must be stricken if invocation of the privilege blocks inquiry into matters which are 'direct' and are not merely 'collateral.'"]; *People v. Sanders* (2010) 189 Cal.App.4th 543, 556 ["[W]hen one or two questions asked during cross-examination are at stake and those questions relate to a collateral matter such as the nonparty witness's credibility, the trial court need not strike the entirety of that witness's direct testimony."].)

Here, prior to Fausto's testimony, appellants' counsel sought leave to examine him regarding a then-open criminal case against him. The case involved charges arising from Fausto's arrest in South Gate in August 2008 for the sale of drugs he had stolen from the Regent Square Pharmacy. During the hearing on the request, the court determined that Fausto intended to invoke his privilege against self-incrimination in response to inquiries regarding the South Gate case. In declining to permit the requested cross-examination, the trial court stated that the South Gate case was "absolutely irrelevant," that Fausto was entitled to invoke his privilege in connection with the case, and that the trial should move on "in an expeditious manner." Shortly afterward, the court also denied a mistrial motion predicated on Fausto's invocation of the privilege.

In view of the principles explained above, we see no error in these rulings.[9] Because Fausto admitted that he had participated in the February 2009 robbery and stolen drugs from the Regent Square Pharmacy in November 2008, the trial court reasonably concluded that evidence regarding the South Gate case shed little additional light on his credibility, and that its potential for delay exceeded its probative value (Evid. Code, § 352). Furthermore, the court was not obliged to strike Fausto's direct testimony due to his invocation of the privilege against self-incrimination, as the South Gate case had only tangential bearing on his credibility, and thus was a "purely collateral matter[]." (*Board of Trustees v. Hartman*, *supra*, 246 Cal.App.2d at p. 764.) The court thus correctly denied appellants' mistrial motion based on Fausto's invocation of the privilege, as appellants showed no "injustice" from the invocation. (*People v. Slocum*, *supra*, 52 Cal.App.3d at p. 884.)[10]

---

[9] The trial court's determinations of relevance are reviewed for abuse of discretion (*People v. Hess* (1951) 104 Cal.App.2d 642; Evid. Code, §§ 350-351), as are its determinations that the time consumed in presenting evidence outweighs its probative value (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125; Evid. Code, § 352). In contrast, the trial court's ruling regarding Fausto's invocation of the privilege is subject to our independent review. (*People v. Williams*, *supra*, 43 Cal.4th at p. 614; *People v. Sanders*, *supra*, 189 Cal.App.4th at p. 554, fn. 2.)

[10] We also reject appellants' related contention that the trial court erred in limiting cross-examination regarding Fausto's plea agreement. The record discloses that appellants' counsel were permitted to question Fausto at length regarding the agreement, including the underlying charges against him. The trial court appears to have limited their examination only once. After Fausto testified that he had envisaged only a theft of the drugs from Tlaxcalteco's van, but no kidnapping, carjacking, or use of force, Jesse's counsel asked why he had accepted the plea agreement. The court barred the question, reasoning that Fausto potentially had many reasons for entering into the agreement, some of which involved advice from his counsel. We discern no abuse of the court's discretion to curtail questioning whose potential for creating delay and confusion outweighed its evidentiary value.

C. *Misstatement of Law*

Appellants contend the trial court misinformed the jury regarding Detective Bambrick's duties to ensure the voluntariness of Fausto's admissions to him. Generally, "[t]he Fourteenth Amendment to the federal Constitution and article I, section 15, of the state Constitution bar the prosecution from using a defendant's involuntary confession." (*People v. Massie* (1998) 19 Cal.4th 550, 576.) Moreover, a defendant may seek to exclude a nonparty witness's testimony as coerced or involuntary upon an adequate showing that admission of the testimony infringes the defendant's own constitutional rights. (*People v. Badgett* (1995) 10 Cal.4th 330, 343.) Here, appellants offer no such showing, as they have never challenged the voluntariness or admissibility of Fausto's statements to Bambrick. Instead, appellants maintain that the trial court's statement to the jury regarding Bambrick's duties was prejudicial to them. As explained below, they are mistaken.[11]

The pertinent statement by the trial court concerned the extent to which Bambrick was obliged to refrain from making false statements during the interview. As our Supreme Court has explained, "'[l]ies told by the police to a

---

[11] At the threshold, respondent argues that appellants forfeited their challenge by failing to raise a timely objection before the trial court. However, a defendant need not assert an objection to preserve a contention of instructional error when the error affects the defendant's "substantial rights." (§ 1259.) In this regard, "[t]he cases equate 'substantial rights' with reversible error" under the test stated in *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*). (*People v. Arredondo* (1975) 52 Cal.App.3d 973, 978.) Here, appellants contend that the purported instructional errors implicate their substantial rights. We address their contention on the merits to determine whether there was an impairment of substantial rights. (See *People v. Anderson* (2007) 152 Cal.App.4th 919, 927.)

suspect under questioning can affect the voluntariness of an ensuing confession, but they are not per se sufficient to make it involuntary.' [Citations.] Where the deception is not of a type reasonably likely to procure an untrue statement, a finding of involuntariness is unwarranted." (*People v. Farnam* (2002) 28 Cal.4th 107, 182.) Under this principle, officers may mislead the suspect regarding their knowledge of the facts of a crime. (E.g., *ibid*. [defendant's confession to an assault and robbery was voluntary, even though interrogating officers had falsely told defendant that his fingerprints had been found on the victim's wallet]; *People v. Thompson* (1990) 50 Cal.3d 134, 161, 166-170 [defendant's confession was voluntary, notwithstanding officer's false representations that several items of evidence identified defendant as the perpetrator of a murder].) Furthermore, officers are permitted to provide truthful information to a suspect about potential sentences, but may not couple threats of exaggerated or harsh sentences with promises of leniency in exchange for the suspect's cooperation. (*People v. Ray* (1996) 13 Cal.4th 313, 340.)

During the interview, Bambrick discussed the potential punishment for kidnapping to commit robbery and grand theft. When the jury viewed a video recording of the interview, the trial court admonished the jury as follows: "In the course of interviewing a witness or someone who is suspected of a crime, a police officer or detective, in conducting that interview, may say things to the witness that are not necessarily true. The police officer can exaggerate the truth, can state things that perhaps haven't occurred to get the witness to talk. And this is perfectly legal and is done and is recognized by the law as something that is acceptable and legal to do. [¶] So if in this tape Detective Bambrick says something to the witness, for instance, about what kind of sentence might be the result of certain kinds of crimes, he's not necessarily quoting something out of the

Penal Code or something that is correct, but may be exaggerat[ing] or saying something to get this witness to talk to him and tell him what's going on."

After the jury returned its verdicts, appellants sought a new trial, contending that the trial court's admonition misstated Bambrick's duties. During the hearing on the motion, the court explained that it had issued the admonition solely to deter the jury from relying on Bambrick's remarks during the interview to speculate regarding appellants' potential punishment. Jesse's counsel argued that the admonition improperly prevented the jury from trusting Bambrick's remarks regarding the penalty for aggravated kidnapping.[12] In denying the new trial motion, the court concluded that although the admonishment misstated the law, appellants had suffered no prejudice from it, as Fausto had been "fully examined and cross-examined by three attorneys in [the] case."

We agree with this determination, regardless of whether the error is examined for prejudice under the test in *Watson*, *supra*, 46 Cal.2d 818, or the more stringent beyond-a-reasonable-doubt test for federal constitutional error found in

---

[12] In view of this argument, appellants have forfeited any contention that Bambrick misstated the penalty for this offense. During the interview with Fausto, Bambrick said that the sentence for kidnapping to commit a robbery was 25 years to life. As discussed below (see pt. E, *post*), the punishment for kidnapping to commit a robbery and the related crime of kidnapping during a carjacking is life with the possibility of parole. (§§ 209, subd. (b)(1), 209.5, subd. (a).) However, before the trial court, appellants' counsel never suggested that Bambrick's remark materially misrepresented the penalty for kidnapping to commit a robbery or that it rendered Fausto's admissions involuntary. On the contrary, Jesse's counsel asserted that Bambrick "did tell the *truth* . . . when he represented to [Fausto] that the potential sentence for a kidnap/robbery or a kidnap/carjack was a life sentence." (Italics added.) Furthermore, Jesse's counsel argued that the trial court's admonition may have created the *misimpression* that Fausto's admissions were involuntary: "[W]hat the court did here is not only give the jury an incorrect statement of the law, but . . . led the jury to believe that [Fausto] may have been induced with a false or inaccurate statement. [¶] In fact, [Fausto] was induced by a truthful statement . . . ."

Chapman v. California (1967) 386 U.S. 18. At trial, Fausto was examined at length by the prosecutor and appellants' counsel regarding his participation in the crimes, his interview with Bambrick, and his plea agreement; moreover, his testimony regarding the crimes was corroborated by other evidence, including Tlaxcalteco's testimony and records of phone conversations involving Fausto and appellants. Under the circumstances, there is no reasonable doubt that appellants would not have achieved a more favorable outcome if the incorrect admonition not been given. Accordingly, we conclude the error was harmless.[13]

D. *Prosecutorial Misconduct*

Appellants contend the prosecutor engaged in several instances of misconduct during trial. As explained below, we discern no misconduct supporting a reversal of the judgments.[14]

Generally, "'"[a] prosecutor's . . . intemperate behavior violates the federal Constitution when it comprises a pattern of conduct 'so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process.'"' [Citation.] '"Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves '"'the use of deceptive or reprehensible methods to attempt to persuade either the

---

[13] In a related contention, appellants contend the trial court improperly barred them from questioning Bambrick whether he accurately stated the penalty for aggravated kidnapping. The ostensible goal of the proposed questions -- as disclosed by appellants' new trial motion (see fn. 12, *ante*) -- was to inform the jury regarding the potential punishment Fausto faced for aggravated kidnapping. We see no abuse of the court's discretion in precluding questioning whose potential for confusing or misleading the jury exceeded its probative value (Evid. Code, § 352).

[14] For the same reasons, we reject appellants' related contention that the trial court improperly denied motions for a mistrial predicated on the purported instances of prosecutorial misconduct, as appellants have shown no injustice arising from the conduct.

court or the jury.’”’”’ [Citation.]” (*People v. Prieto* (2003) 30 Cal.4th 226, 260.) Prosecutorial misconduct is examined for prejudice under the test in *Watson*, unless it requires assessment under the test for federal constitutional error in *Chapman*. (*People v. Herring* (1993) 20 Cal.App.4th 1066, 1077.)

At the outset, we noted that appellants include their assertion of *Brady* error among the purported instances of prosecutorial misconduct. As the prosecutor did not contravene her duties under *Brady* (see pt. A., *ante*), we limit our inquiry to appellants’ remaining contentions.[15]

1. *Video Recording of Jesse’s Interview*

We begin with two incidents related to a video recording of Jesse’s interview with Detective Bambrick. Appellants contend that the prosecutor (1) disobeyed a court order not to refer to redactions in the video recording and (2) presented the video recording to the jury in a prejudicial and inflammatory manner. We reject both contentions.

---

[15] Respondent contends that appellants forfeited several of their contentions by failing to object and request an admonition before the trial court. Ordinarily, absent an objection and request for an admonition, we review a contention of prosecutorial misconduct solely when “‘an admonition would not have cured the harm caused by the misconduct.’” (*People v. Earp* (1999) 20 Cal.4th 826, 858.) However, in all the purported instances of misconduct below, the court admonished the jury following an objection by appellants or on the court’s own motion. For this reason, we review appellants’ contentions to determine the gravity of the misconduct (if any) and the efficacy of the admonition to cure any resulting prejudice. (*People v. Riggs* (2008) 44 Cal.4th 248, 317 & fn. 34 [examining contentions regarding prosecutorial misconduct to which trial court interposed its own motion]; see *People v. Williams* (2009) 170 Cal.App.4th 587, 628 [reviewing court has discretion to examine instances of purported prosecutorial misconduct regarding which appellant did not object and request admonition].)

Generally, it is misconduct for a prosecutor to violate a court ruling by "elicit[ing] or attempt[ing] to elicit inadmissible evidence in violation of a court order." (*People v. Silva* (2001) 25 Cal.4th 345, 373.) However, no misconduct occurs when the prosecutor acts reasonably in light of an ambiguous ruling. (*People v. Price* (1991) 1 Cal.4th 324, 452-453.) In the absence of a court ruling barring the introduction of items of evidence, prosecutors engage in misconduct regarding such evidence only when they rely on deceptive or reprehensible methods of persuasion. (*People v. Silva*, *supra*, 25 Cal.4th at p. 373.)

During his interview with Bambrick, Jesse acknowledged driving the stolen van. Bambrick then asked Jesse to write a letter of apology to Tlaxcalteco. The following dialogue ensured:

"[Jesse]: I'll do that if you do me a favor." . . .

"[Bambrick]: What's that?

"[Jesse]: 'Say I was coming at you and just shoot me.'

"[Bambrick]: What's that? I didn't hear you. . . ."

In preparing the video recording of the interview for trial, the prosecutor edited it to remove certain remarks. According to the transcript she created for the edited video recording, the recording was to end immediately after Jesse said, "I'll do that."

At trial, before the jury viewed the video recording, the prosecutor told the trial court and appellants' counsel that the transcript tracked what the jury would see. At the same time, the court asked the parties whether it should direct the jury to disregard the redactions in the recording. After Jesse's counsel argued that the proposed instruction might fuel juror speculation that evidence was "being hidden," the court agreed, and stated that it would view the recording before deciding whether an instruction was necessary. The court said: "I'll take a look at

the video. If I think there's a problem, I'll say something to them. If they ask a question, I can address it at that time."

When the recording was played for the jury, the prosecutor moved quickly from her desk to stop the video player manually. Shortly afterward, the prosecutor asked Bambrick, "Now, there were portions of the [video] clip that were missing. Were your statements as they were [depicted] in the video accurate?" Before Bambrick answered, the court convened a bench conference and said to the prosecutor, "[W]e had an entire side bar where it was agreed that nothing would be said about the tape being spliced." The prosecutor replied that as the splices in the video recording were visible to the jury, her intention was solely to ask whether "anything was taken out of context." When the court asked why the prosecutor had defied an order not to mention the splices, the prosecutor explained that she had not so understood the court's remark regarding a possible admonishment. The prosecutor stated, "I thought it meant the court was going to instruct [the jurors]."

During the same bench conference, appellants' counsel argued that contrary to the transcript, the video recording -- as viewed by the jury -- disclosed Jesse's remarks following his statement, "I'll do that." Pointing to the prosecutor's question to Bambrick and the defectively edited recording, they requested a mistrial or, alternatively, an admonition that the prosecutor had engaged in misconduct.

The trial court found that although the recording contained some of the purportedly excised remarks, the prosecutor had turned off the video player before the jury heard more than "if you do me a favor." In addition, noting that the time counter visible on the recording disclosed the existence of splices, the trial court found no "purposeful" violation of its ruling by the prosecutor. In denying the mistrial motion, the court admonished the jury as follows: "[P]ortions of the

interview with Jesse . . . were redacted or removed based upon the laws of evidence. You are not to speculate as to the reasons for such removal or as to the contents therein."

We discern no prosecutorial misconduct. As the splices in the video recording were visible and the trial court's remarks before the recording's presentation, as disclosed in the record, reflected only an intention to issue an admonishment if needed, the prosecutor did not disregard a clear court order. (See *People v. Price*, *supra*, 1 Cal.4th at pp. 452-453 [prosecutor did not engage in misconduct when trial court's ambiguous remarks did not clearly prohibit prosecutor's acts].) Moreover, notwithstanding the prosecutor's error in preparing the video recording, the prosecutor halted the video player before the jury heard any inadmissible remarks. However, even if -- as appellants maintain on appeal -- the prosecutor's question to Bambrick and hurried end to the video playback improperly drew the jury's attention to the excised portions of Jesse's interview, the trial court's admonition was sufficient to cure any prejudice to appellants. (*People v. Silva*, *supra*, 25 Cal.4th at p. 374 [admonition was sufficient to cure prejudice from prosecutor's violation of ruling limiting questioning].)

2. *Ski Masks*

Appellants contend the prosecutor engaged in prejudicial misconduct by displaying four ski masks to the jury. We disagree.

While examining Bambrick regarding items obtained during a search of David's residence, the prosecutor asked him to open an evidence envelope. He did so, and removed four black ski masks. The trial court immediately convened a bench conference and inquired regarding the relevance of the masks. In reply, the prosecutor pointed to Jesse's interview with Bambrick, during which Jesse stated

that some unknown persons had forced him to wear a hood when they compelled him to drive the stolen van. The prosecutor added that she was unaware that the envelope contained multiple ski masks. Appellants' counsel made no request for an admonition, but sought a mistrial, arguing that the masks encouraged the jury to speculate that appellants had engaged in other crimes. Upon denying the motion, the court admonished the jury as follows: "[The masks] that [were] taken out of th[e] envelope ha[ve] nothing to do with this case. [¶] You are not to speculate as to why this evidence was introduced. It should not have been."

Nothing before us suggests that this admonition was ineffective to cure the prejudice (if any) flowing from the presentation of the ski masks. (See *People v. Valdez* (2004) 32 Cal.4th 73, 123 [admonition sufficient to cure prejudice from presentation of excluded evidence regarding defendant's prior conviction].) Accordingly, appellants' contention fails for want of a showing of prejudice.

3. *Closing Argument*

Appellants maintain that three instances of misconduct occurred during the rebuttal portion of the prosecutor's closing argument. Generally, to prevail on a claim of prosecutorial misconduct based on remarks to the jury, "the defendant must show a reasonable likelihood the jury understood or applied the complained-of comments in an improper or erroneous manner." (*People v. Frye* (1998) 18 Cal.4th 894, 970, overruled on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) As explained below, appellant had failed to establish such misconduct.

a. *"Intellectual Dishonesty"*

Appellants contend the prosecutor improperly attacked their defense counsel. Generally, it is improper "for the prosecutor 'to imply that defense counsel has fabricated evidence or otherwise to portray defense counsel as the villain in the case. . . . Casting uncalled for aspersions on defense counsel directs attention to largely irrelevant matters and does not constitute comment on the evidence or argument as to inferences to be drawn therefrom.'" (*People v. Fierro* (1991) 1 Cal.4th 173, 212, disapproved on another ground in *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 203-207, quoting *People v. Thompson* (1988) 45 Cal.3d 86, 112.) Nonetheless, an improper comment occurs only when there is a "personal attack" on defense counsel. (*People v. Taylor* (2001) 26 Cal.4th 1155, 1167.)

No attack of this sort occurred here. During the rebuttal portion of the prosecutor's closing argument, she urged the jury to use common sense in evaluating the evidence, including the video recordings of Detective Bambrick's interviews. The prosecutor further stated: "Real life is not black-and-white words. Context, body language, and tone of voice have meaning. Lawyers argue words. They argue black-and-white. And when those words are spun to mean something other than what you know them to mean, it's intellectual dishonesty."

In response to an objection from appellants' counsel, the trial court held a bench conference, during which the prosecutor argued that she had not leveled accusations at counsel, but merely defined intellectual dishonesty. The court agreed that the prosecutor's remark was "phrased in such a way" that she "didn't accuse them directly," but concluded "those words are fraught with danger." The court struck the remark and admonished the jury to disregard it.

Because the prosecutor directed no attack at appellants' counsel, she did not engage in misconduct. As our Supreme Court has explained, criticisms of defense

tactics are not misconduct when they are too general or diffuse to constitute a personal attack on defense counsel. (*People v. Medina* (1995) 11 Cal.4th 694, 759 ["To observe that an experienced defense counsel will attempt to 'twist' and 'poke' at the prosecution's case does not amount to a personal attack on counsel's integrity."].) Here, the prosecutor remarked that lawyers generally "argue words" and defined "intellectual dishonesty" as "spun" words, but did not directly attack appellants' counsel. Nonetheless, even if her remarks had amounted to misconduct, the trial court's admonition was sufficient to cure any prejudice flowing from it. (*People v. Friend* (2009) 47 Cal.4th 1, 30 [admonition nullified prejudice from prosecutor's intemperate comment that defense counsel was a "'true believer'" who "'support[ed] her belief based solely on her belief'"].)

b. *Fausto's Plea Agreement*

Appellants contend the prosecutor improperly urged the jury to accept the truth of Fausto's testimony because the trial court would determine his veracity. We see no misconduct.

"Although a prosecutor may state his opinion formed from deductions made from evidence introduced at the trial, he or she may not express a personal opinion as to guilt if there is substantial danger that a juror will interpret it as being based on information not in evidence. Further, the prosecutor is prohibited from stating or implying facts for which there is no evidence before the jury. [Citations.]" (*People v. Heishman* (1988) 45 Cal.3d 147, 195.) In view of these principles, "[i]mpermissible 'vouching' may occur where the prosecutor places the prestige of the government behind a witness through personal assurances of the witness's veracity or suggests that information not presented to the jury supports the witness's testimony. [Citations.]" (*People v. Fierro*, *supra*, 1 Cal.4th at p. 211.)

During the trial, the terms of Fausto's plea agreement were admitted into evidence. Under the agreement, Fausto was obliged to testify truthfully during appellants' trial; failure to so testify would void the agreement and render him subject to prosecution for perjury. In addition, after the completion of appellants' trial, Fausto was to be sentenced by the judge who had conducted the trial. The agreement provided that at the time of sentencing, the judge would be authorized to "make the determination of the truthfulness of [Fausto's] testimony."

In discussing the plea agreement during the rebuttal portion of closing argument, the prosecutor stated: "What are the terms of that agreement? To testify to what I want him to? To testify to what Detective Bambrick wanted him to testify to? To testify against [appellants]? No. To come in here and tell the truth. Who decides if he tells the truth? It's not me. It's her."

Following an objection from appellants' counsel, the following colloquy occurred in open court:

"The Court: Well, who decides who tells the truth is the jury.

"[Prosecutor]: For . . . Fausto's deal. I'm referring to the deal and the terms of the deal or that the court who hears it.

"The Court: Who did you refer to as 'her'?

"[Prosecutor]: You.

"The Court: I had no part of it.

"[Prosecutor]: No. The deal . . . is [that] the court that hears his testimony [] is the court that makes the determination of [its] truthfulness."

The court overruled appellants' objection and permitted the prosecutor to continue her argument.

Later, while the jury was conducting its deliberations, appellants filed a motion for a mistrial. Aside from contending that the trial court had failed to

instruct the jury that Fausto's testimony as an accomplice required corroboration (CALCRIM No. 301), the motion asserted that the prosecutor's argument regarding Fausto's plea agreement was improper. The trial court denied the motion, but reinstructed the jury on various matters, including that it "must judge the credibility and the believability of each and every witness."[16]

In view of this record, the prosecutor's argument did not constitute impermissible vouching because it accurately reflected Fausto's plea agreement, which had been admitted into evidence. Furthermore, there is no reasonable possibility that the prosecutor's argument misled the jury, as the trial court repeatedly admonished the jury regarding its duty to decide whether Fausto had testified truthfully.

c. *Burden of Proof*

Appellants contend that the prosecutor improperly attempted to shift the burden of proof to them. "'[I]t is improper for the prosecutor to misstate the law generally [citation], and particularly to attempt to absolve the prosecution from its prima facie obligation to overcome reasonable doubt on all elements. [Citation.]' [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 829-830, quoting *People v. Marshall* (1996) 13 Cal.4th 799, 831.) We conclude that the prosecutor's remarks, viewed in context, were not misconduct.

During the opening portion of the prosecutor's closing argument, she maintained that the evidence established the crimes charged against appellants. Jesse's counsel contended that the prosecution had failed to prove the crimes

---

[16] Because the judge who presided over the trial was unavailable during the jury's deliberations, a different judge heard argument regarding the mistrial motion and gave the supplemental instructions.

because Tlaxcalteco had participated in the theft of the drugs, and thus was never subject to the "force or fear" required for the crimes. David's counsel argued that the crimes were nothing more than a "cargo theft" devised by Fausto and executed by Tlaxcalteco.

Near the end of the prosecutor's rebuttal, she identified items of evidence and witnesses that appellants could have presented to support their theories, and noted that they had failed to do so. The prosecutor then stated: "My burden is not proof beyond any doubt and it's not beyond whatever they can stand up and throw up now. And the defense has the same subpoena power I do. If there was any witness or evidence to show the theories they just spouted out at you, you'd have seen it."

The trial court immediately interrupted the prosecutor and stated: "[T]he burden of proof is always on the People. The defense does not have to call any witnesses and has nothing to prove." The prosecutor then remarked, "And [the court] is absolutely right. My burden is proof beyond a reasonable doubt, not proof beyond any doubt. The theories that are being thrown to cast doubt, there's no evidence to support them." Later, the jury was instructed with CALCRIM No. 220, which states: "[T]he People [must] prove a defendant guilty beyond a reasonable doubt. . . . [¶] Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginery doubt."

We see no error in the prosecutor's remarks. As our Supreme Court has explained: "[T]he prosecution must prove every element of a charged offense beyond a reasonable doubt. The accused has no burden of proof or persuasion, even as to his defenses. [Citations.] However, once the prosecution has submitted

proof that permits a finding beyond reasonable doubt on every element of a charge, the accused may obviously be obliged to respond with evidence that 'raises' or permits a reasonable doubt that he is guilty as charged. [Citations.]" (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1214-1215, italics omitted.) Thus, a prosecutor may properly argue that the crimes alleged have been proved beyond a reasonable doubt, and "that the weakness of the defense response [has] left the record devoid of any basis for reasonable doubt." (*Id*. at p. 1215.) In this regard, the prosecutor may comment on the defendant's failure to present logical witnesses and evidence. (*People v. Bell* (1989) 49 Cal.3d 502, 539; *People v. Guzman* (2000) 80 Cal.App.4th 1282, 1289.) Under these principles, there is no reasonable possibility that the prosecutor's remarks, viewed in light of the trial court's admonishment and instructions, misled the jury regarding the burden of proof. In sum, there was no reversible prosecutorial misconduct.

E. *Sentencing Error*

Appellants contend the trial court erred in imposing sentence. For the reasons explained below, we agree.

In sentencing David to a total term of 17 years plus life, the trial court imposed life with the possibility of parole on his convictions for kidnapping to commit robbery (count 1; § 209, subd. (b)) and kidnapping during a carjacking (count 4; § 209.5, subd. (a)), and ordered the life terms to run concurrently. The court further imposed of the five-year middle term for carjacking (count 2; § 215, subd. (a)), and one-third of the three-year middle term -- that is, one year -- for robbery (count 3; § 211). The court doubled each of these terms for a prior felony conviction (§§ 667, subd. (e)(1), 1170.12), added a five-year enhancement for a

prior serious felony conviction (§ 667, subd. (a)(1)), and ordered the determinate terms to run consecutively before the life terms.

In sentencing Jesse to a total term of six years plus life, the trial court again imposed concurrent life terms for kidnapping to commit robbery (count 1) and kidnapping during a carjacking (count 4). In addition, the court imposed a five-year term for carjacking (count 2) and a consecutive one-year term for robbery (count 3), which were to run before the life terms.

1. *Lesser Included Offense*

Appellants contend they cannot suffer convictions for both carjacking (§ 215) and kidnapping during a carjacking (§ 209.5, subd. (a)). They are correct.[17] As our Supreme Court has explained, "multiple convictions may not be based on necessarily included offenses arising out of a single act or course of conduct." (*People v. Lewis* (2008) 43 Cal.4th 415, 518.) In *People v. Contreras* (1997) 55 Cal.App.4th 760, 762-763, the defendant was convicted of carjacking and kidnapping during a carjacking when the evidence at trial established that he had forced his victim into her car, travelled a distance with her, and then driven away in the car after abandoning her in a field. After determining that carjacking is a necessarily included offense of kidnapping during a carjacking, the appellate court

---

[17] Respondent maintains that appellants' failure to assert this contention before the trial court works a forfeiture. We disagree. Notwithstanding the absence of an objection to the trial court, defendants may attack on appeal unauthorized sentences that cannot be lawfully imposed under any circumstances. (*People v. Smith* (2001) 24 Cal.4th 849, 852.) Appellants' contention constitutes a challenge to an unauthorized sentence, as the prohibition against multiple punishment for necessarily included offenses is triggered when the pertinent offenses are suitably related under the so-called "elements" test (*People v. Reed* (2006) 38 Cal.4th 1224, 1231), which presents only a question of law (*People v. Parson* (2008) 44 Cal.4th 332, 349).

reversed the conviction for carjacking. (*Id*. at pp. 763-765; see also *People v. Jones* (1999) 75 Cal.App.4th 616, 624-625 [concluding that kidnapping during a carjacking "requires a completed offense of carjacking"].) In view of this authority, the judgments must be modified to strike appellants' convictions for carjacking (§ 215) and the respective terms of imprisonment imposed for them.

2. *Section 654*

Appellants contend the trial court contravened section 654 in failing to stay one of their life terms and the term for robbery. We agree with both contentions.

Subdivision (a) of section 654 prohibits multiple punishments for "[a]n act or omission that is punishable in different ways by different provisions of law." Generally, multiple punishments are proper if the defendant pursues suitably independent criminal objectives. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1473-1474.) The test governing the application of section 654 was first stated in *Neal v. State of California* (1960) 55 Cal.2d 11, 19: "Whether a course of criminal 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. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one." In determining the appropriate sentence under section 654, a court must identify the count carrying the longest sentence, including enhancements, and stay the sentence imposed under the other pertinent counts. (*People v. Kramer* (2002) 29 Cal.4th 720, 722.)

During the sentencing hearing, the prosecutor suggested that under section 654, punishment was properly imposed only on appellants' convictions for kidnapping to commit robbery (count 1) because "the charges [were] one transaction." In response, the trial court remarked that appellants' convictions for

kidnapping to commit robbery and kidnapping during a carjacking "merge[d] pursuant to [section] 654." Nonetheless, the court improperly imposed concurrent life terms for the offenses, rather than staying one of the life terms. Respondent agrees this was error. Furthermore, the court incorrectly imposed separate punishments on appellants' convictions for robbery. The record provides no basis for finding that appellants had more than one objective in robbing Tlaxcalteco while carjacking his van and kidnapping him, as all of their conduct was aimed at taking the drugs within the van.

Respondent maintains that separate punishment was permitted for the robbery because Jesse took items from Tlaxcalteco with objectives other than his goal of acquiring the drugs. Respondent argues that Jesse removed Tlaxcalteco's cell phone battery to render the phone useless, and took his identification card -- which displayed his name and address -- to instill fear in him.

This contention fails in light of the record before us. Generally, "[w]hen a defendant steals multiple items during the course of an indivisible transaction involving a single victim, he commits only one robbery or theft notwithstanding the number of items he steals." (*People v. Brito* (1991) 232 Cal.App.3d 316, 326, fn. 8.) As our Supreme Court has explained, a transaction is divisible for purposes of imposing separate punishments under section 654 only when the defendant's criminal objectives are "independent of and not merely incidental to each other." (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) Because nothing suggests that Jesse disabled Tlaxcalteco's cell phone and created fear in him for any purpose

other than to facilitate the robbery of the drugs, his conduct was "merely incidental" to his main objective.[18]

"If a trial court violates section 654, the proper remedy on appeal is not reversal of the counts involved, but elimination of the penalty for all but one of them (the one carrying the greatest penalty, if the penalties are disparate), by staying execution of, or simply striking, the terms of imprisonment for all but one of them. [Citations.]" (*People v. Davis* (1989) 211 Cal.App.3d 317, 323; see *In re McGrew* (1967) 66 Cal.2d 685, 688.) Each appellant's punishment must therefore be stayed for one of the kidnapping-related offenses (counts 1 and 4) and robbery (count 3.)

3. *Minimum Parole Eligibility Period*

Finally, as appellants acknowledge, David's prior serious felony conviction mandates the doubling of the seven-year minimum parole eligibility period for his life sentence.[19] (*People v. Jefferson* (1999) 21 Cal.4th 86, 90; §§ 667, subd. (e)(1), 1170.12, subd. (c)(1), 3046.)

---

[18] In addition, we note that although robbery is not a lesser included offense of kidnapping to commit a robbery, the latter offense necessarily includes as an element the "intent to rob that arises before the kidnapping commences." (*People v. Lewis*, *supra*, 43 Cal.4th at p. 518.) Thus the court, in finding that the kidnapping-related offenses "merge[d]" for purposes of section 654, impliedly determined that appellants' conduct throughout the carjacking and kidnapping was governed by their plan to acquire the drugs.

[19] Appellants concede that the five-year enhancement for the prior conviction was properly imposed on David's sentence and ordered to run prior to his life term (§ 667, subd. (a)(1)).

DISPOSITION

The judgments are modified to strike appellants' convictions for carjacking (§215, subd. (a); count 2) and the respective terms imposed for that offense (David: 10 years; Jesse: 5 years), and to stay punishment for appellants' convictions for robbery (count 3; § 211) and kidnapping during a carjacking (count 4; § 209.5, subd. (a)); in addition, the judgment regarding David is modified to reflect that his minimum parole eligibility period is fourteen years (§§ 667, subd. (e)(1), 1170.12, subd. (c)(1), 3046). In all other respects, the judgments are affirmed. The superior court is directed to prepare amended abstracts of judgment to reflect the modifications to appellants' sentences, and forward copies of the amended abstracts of judgment to the California Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.