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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE A. QUINONES, JR.,

Defendant and Appellant.

B293572

(Los Angeles County  
Super. Ct. No. BA456457)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

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The sole issue presented on appeal is whether sufficient evidence supports the jury's finding that appellant Jose Quinones, Jr. inflicted great bodily injury upon his 13-year-old rape victim when she became pregnant as a result of the rape. Appellant argues that pregnancy, without complications or undue physical pain from labor, cannot as a matter of law constitute great bodily injury. We disagree and find the evidence sufficient.

### BACKGROUND

Appellant began to sexually molest his step-daughter when she was eight years old by squeezing and touching her genitals. When she was nine years old, he forced her to orally copulate him. Appellant began to have vaginal and sexual intercourse with her at age 11 in the bathroom of their home after the rest of the family had retired for the night. He continued to have sex with her for two years until she began to complain of stomach pain and her stomach appeared larger and harder. Suspecting a tumor, victim's mother took her to the hospital where they learned she was several months pregnant. Victim confided in her mother that appellant had forced her to engage in sex acts and that he was the baby's biological father. She was 13-years-old when she gave birth three months later.

Victim carried the male baby to term; he was immediately adopted at birth. Victim initially told police the father of the child was a boy at school, but eventually she admitted it was appellant. A DNA test of the baby resulted in a 99 percent probability that appellant was the father. According to the test, appellant was 147 million times more likely to be the father of the baby, as compared to any unrelated person.

Victim testified that her stomach began to hurt from labor contractions. The contractions were “really bad” and “really hurt.” She had “bad pains in [her]stomach” that went from her belly to her vagina. She and her mother took a bus to the hospital where she gave birth two days later. The baby was approximately one month premature and four and one-half pounds at birth. After giving birth, victim remained in the hospital for four to five days. She felt tired and achy.

A jury found appellant guilty of three counts of oral copulation or sexual penetration with a child 10 years old or younger in violation of Penal Code<sup>1</sup> section 288.7, subdivision (b); sodomy with a child under the age of 14 in violation of section 286, subdivisions (c)(2), (c)(3) and (d); and two counts of rape of a child under the age of 14 in violation of section 261, subdivisions (a)(2) and (a)(6). As to the rape count resulting in the pregnancy, the jury found appellant inflicted great bodily injury upon the victim in violation of section 12022.8. As to the other counts, the jury found appellant committed the offenses by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury in violation of section 1203.066, subdivision (a)(2).

The trial court sentenced appellant to a total of 75 years to life in state prison – five consecutive terms of 15 years to life for five of the counts – followed by a consecutive term of life without the possibility of parole for the rape offense with the great bodily injury allegation. Appellant timely appealed.

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

## DISCUSSION

The sole issue on appeal is whether the pregnancy resulting from the rape is sufficient to support the finding of great bodily injury. Section 12022.7, subdivision (f) defines “great bodily injury” as a “significant or substantial physical injury.” Whether the physical harm suffered by the victim constitutes a great bodily injury is a question of fact for the jury. (*People v. Escobar* (1992) 3 Cal.4th 740, 750.) Proof that a victim’s bodily injury is great is commonly established by evidence of the severity of the victim’s physical injury, the resulting pain, or the medical care required to treat the injury. (*People v. Cross* (2008) 45 Cal.4th 58, 66 (*Cross*); *People v. Harvey* (1992) 7 Cal.App.4th 823, 827–828.) If there is sufficient evidence to sustain the jury’s finding of great bodily injury, the court is bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding. (*Escobar*, at p. 750.)

It has long been recognized that pregnancy resulting from a forcible rape or similar sex offense is sufficient to support a finding of great bodily injury. (*People v. Sargent* (1978) 86 Cal.App.3d 148; *People v. Superior Court (Duval)* (1988) 198 Cal.App.3d 1121.) This conclusion was recently reaffirmed in the case of unlawful but nonforcible sexual conduct on facts strikingly similar to the facts in this appeal. (*Cross, supra*, 45 Cal.4th 58.)

In *Cross*, defendant impregnated his 13-year-old stepdaughter who later had an abortion at 22 weeks. The court concluded a pregnancy without medical complications may constitute great bodily injury. (*Cross, supra*, 45 Cal.4th at p. 66.) The court stated that it “need not decide that every pregnancy

resulting from unlawful sexual conduct . . . will invariably support a factual determination [that] the victim has suffered a significant or substantial injury,” but that the jury in that case could reasonably have found the victim suffered a significant or substantial physical injury “based solely on the evidence of the pregnancy.” (*Ibid.*) In *Cross*, the victim, who had never given birth before, carried the baby for 22 weeks before having an abortion. The prosecutor urged the jurors to rely on their “common experiences” to find that the 13-year-old victim had suffered great bodily injury. (*Id.* at p. 66.) The majority in *Cross* clearly held that impregnation alone is sufficient to support a finding that great bodily injury was inflicted, without further evidence about the weight of the fetus, medical complications, or details about the abortion procedure. (See *People v. Meneses* (2011) 193 Cal.App.4th 1087, 1091.)

Here the 13-year-old victim had never given birth before, was in labor for two days, testified to the “really bad” pain she felt from the contractions, and remained in the hospital another four to five days after delivery. Under *Cross* on these facts, no further evidence is necessary to support a finding of great bodily injury.

DISPOSITION

The judgment is affirmed.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.