

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN JOSE VARGAS,

Defendant and Appellant.

B265383

(Los Angeles County
Super. Ct. No. VA086250)

APPEAL from the judgment of the Superior Court of Los Angeles County. Joseph R. Porras, Judge. Affirmed.

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stephanie A. Miyoshi and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Juan Jose Vargas was convicted by a jury of one count of assault with a deadly weapon. The jury also found true the special allegation that defendant personally inflicted great bodily injury on the victim, his former girlfriend. Defendant was sentenced to an eight-year prison term.

The sole issue on appeal is whether there is substantial evidence supporting the great bodily injury finding. Because we find there is ample evidence in the record supporting the jury's true finding, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2004, defendant and San Juana Delgado had been dating for about four years. He often stayed overnight at her apartment in Huntington Park. On the day after Thanksgiving, defendant, Ms. Delgado, her cousin, and a few friends were at Ms. Delgado's apartment, drinking and hanging out. Defendant and Ms. Delgado's cousin stayed overnight.

In the morning, Ms. Delgado received a phone call from a friend. Defendant asked who she was talking to, and she told him. Ms. Delgado then went to use the bathroom. Afterward, she went into the kitchen to start washing dishes. Defendant came up behind her, and said something to the effect "You're gonna go have fun." Defendant then started stabbing her in the back. She did not realize what was happening at first. She thought defendant was hitting her. She turned around to face him and he stabbed her in the stomach. Defendant also cut her on her right forearm.

Ms. Delgado turned to get away. Defendant stabbed her from behind again and the knife handle broke off. Ms. Delgado ran outside to the balcony, screaming. At that point,

Ms. Delgado's cousin confronted defendant. Defendant gave him the knife, and left.

Sandra Barragan, a friend and downstairs neighbor of Ms. Delgado's, came upstairs at the sound of her screams. Ms. Delgado looked scared and there was blood soaking through her white T-shirt. Ms. Barragan saw a lot of blood on the porch.

Ms. Delgado was taken to the hospital by ambulance, and Ms. Barragan went with her. Ms. Delgado was scared, crying and in a "lot of pain."

Dr. Gracie-Ann Dinkins, a trauma surgeon at St. Francis Hospital, evaluated Ms. Delgado when she arrived. Dr. Dinkins testified that Ms. Delgado sustained four stab wounds to her upper left abdomen, each approximately an inch deep and half a centimeter in length. She had four similar stab wounds on her lower left back, as well as a fifth wound near her spine. There were also two small wounds to Ms. Delgado's right wrist.

It was necessary to perform X-rays and a CT-scan, in addition to a physical examination, in order to rule out injuries to Ms. Delgado's internal organs. Dr. Dinkins ruled out internal injuries and closed Ms. Delgado's wounds with "Dermaband" a type of skin adhesive, in lieu of sutures. Dr. Dinkins explained that stab wounds are "tricky" and must be treated seriously, even when there is no substantial bleeding. This is so because a stabbing can result in "a vessel retracting and actually closing off" as a defense mechanism and clots may form.

Detective Rick Curiel of the Huntington Park Police Department was assigned Ms. Delgado's case. He spoke with Ms. Delgado and she identified defendant as the one who had stabbed her. Efforts were made to locate defendant, but they were unsuccessful. An arrest warrant was issued for defendant.

In early 2013, defendant was arrested in Arizona on the outstanding arrest warrant. Detective Curiel went to Arizona, along with his partner, Carlos Rodriguez, to pick up defendant.

Defendant was charged by information with one count of attempted murder, along with allegations defendant had personally used a deadly weapon and inflicted great bodily injury in the commission of the offense. The first trial ended in a mistrial.

An amended information was filed in March 2015, adding a count for assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), and an allegation that defendant inflicted great bodily injury on the victim within the meaning of section 12022.7, subdivision (e).¹

The second jury trial proceeded in April 2015. Ms. Delgado and her neighbor, Ms. Barragan testified, as did Detectives Curiel and Rodriguez. Per stipulation, the testimony of Dr. Dinkins from the first trial was read into the record. Photographs of Ms. Delgado's wounds, her blood-soaked clothes, the broken knife, and the blood outside on her balcony were presented to the jury.

Defendant testified in his own defense. He said that he, Ms. Delgado and her cousin were drinking and using drugs that night. He denied stabbing Ms. Delgado before leaving the apartment the following morning.

¹ Penal Code section 12022.7, subdivision (e) provides, in part, that "[a]ny person who personally inflicts great bodily injury under circumstances involving domestic violence in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three, four, or five years."

The jury acquitted defendant of attempted murder but found him guilty of assault with a deadly weapon and found the great bodily injury allegation true.

The court sentenced defendant to a state prison term of eight years (upper term of four years on the assault, plus a consecutive four-year term for the great bodily injury enhancement). Defendant was awarded 847 days of custody credits.

This appeal followed.

DISCUSSION

Defendant contends the record does not contain substantial evidence supporting the jury's true finding on the great bodily injury allegation. He argues the evidence established nothing more than "minor or moderate" harm and that the victim suffered very small stab wounds that did not need suturing. An appellant raising a substantial evidence contention forfeits the issue unless a fair summary of all evidence supporting the verdict is presented in the opening brief. (See, e.g., *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738 ["'A party who challenges the sufficiency of the evidence to support a particular finding must *summarize the evidence* on that point, *favorable and unfavorable*, and *show how and why it is insufficient.*'"].) Defendant mentioned a few facts related to the testimony of Dr. Dinkins, but failed to fully summarize all of the evidence supporting the jury's verdict. Manifestly, the facts described above are substantial evidence that Ms. Delgado suffered great bodily injury.

The statutory definition of great bodily injury is "a significant or substantial physical injury." (Pen. Code, § 12022.7, subd. (f).) "Proof that a victim's bodily injury is 'great'—that is, significant or substantial within the meaning of section

12022.7—is commonly established by evidence of the severity of the victim’s physical injury, the resulting pain, or the medical care required to treat or repair the injury.” (*People v. Cross* (2008) 45 Cal.4th 58, 66.) Neither “medical complications” nor “the use of force is required to support a finding of great bodily injury.” (*Id.* at p. 65.)

Ms. Delgado suffered nine stab wounds that bled profusely, causing her to suffer great pain and requiring medical care to staunch the bleeding and close the wounds. There was ample evidence supporting the jury’s finding.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.