

FEB 14 2024

Jorge Navarrete Clerk

Court of Appeal, First Appellate District, Division One - No. A165155

Deputy

S283244

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

JASON BRYAN CASS, Defendant and Appellant.

The petition for review is denied.

GUERRERO

Chief Justice

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON BRYAN CASS,

Defendant and Appellant.

A165155

(Sonoma County Super. Ct.
No. SCR739513-1)

A jury convicted Jason Bryan Cass of three felonies—willfully inflicting corporal injury on a cohabitant, assault by means likely to inflict great bodily injury, fleeing a pursuing police officer while driving recklessly—and several misdemeanor violations of a court order to stay away from victim Jane Doe. The trial court sentenced him to prison. On appeal, Cass contends defense counsel rendered ineffective assistance by failing to move to exclude evidence that he invoked his right to remain silent and that he was on probation at the time of the offenses. We affirm.¹

¹ We grant Cass’s unopposed motion to augment the record with a custody credit calculation prepared by the probation department. On our own motion, we augment the record with appellate counsel’s November 2022 letter asking the trial court to award Cass 57 days of presentence custody credit, and with the trial court’s December 8, 2022 amended abstract of judgment doing so. (See Cal. Rules of Court, rules 8.155(a)(1)(A), 8.340(c).)

BACKGROUND

On a July 2020 evening, Joseph S. was driving home from Lake Sonoma. He stopped at a highway turnout where he saw a man “beating the living daylights out” of Doe. It looked like the man “was trying to kill her.” The man was straddling Doe, punching her in the face and striking her with “frightening power.” She was “defenselessly taking the shots.” When the man saw Joseph, he jumped in a car and fled. The man drove towards the freeway, away from Lake Sonoma. Doe was screaming for help, saying “‘don’t leave me, don’t leave me.’” Joseph called 911, then drove after the car.

Robert O. was driving toward Lake Sonoma when he saw a car speeding in the opposite direction. Another car was following behind—Robert assumed “they were in an altercation or something happened.” He continued towards Lake Sonoma and came across Doe on the side of the road. She was on the ground, crying in pain. Her face was “battered [and] bleeding.” Doe asked, “‘Why did he do this to me?’” and said she was referring to her boyfriend, who had left in her car, a green Cadillac. Robert called 911. Using Robert’s phone, Doe called her mother and said her boyfriend had beaten her up.

Doe repeated this information to a paramedic who arrived shortly thereafter. The paramedic summoned a helicopter to transport Doe—who had “significant bruising and swelling to her face” and who was moaning in pain—to a trauma center. A helicopter transported Doe to the hospital. A sheriff’s deputy spoke to Doe in the emergency room. Her responses to his questions were labored, and she had difficulty understanding and answering

As Cass has received the relief he seeks, his custody credit claim is moot. (See *People v. Mount* (2021) 66 Cal.App.5th 599, 604–605.)

his questions. The deputy obtained an emergency protective order restraining Cass.

That evening, officers attempted a high risk stop of a green Cadillac. The car failed to yield for over two miles, accelerating, driving through three intersections controlled by stop lights at 60 miles per hour without yielding, passing a slower car by crossing the double lines into oncoming traffic, and swerving in an attempt to avoid spike strips deployed by the police. Cass was eventually arrested after the Cadillac became inoperable and he unsuccessfully tried to run from the police. Cass was served with the emergency protective order requiring him to stay away from Doe. Days later, the trial court issued a criminal protective order prohibiting Cass from having contact with Doe; Cass was personally served with the order.

In late July 2020—about a week after the trial court issued the protective order—a Sonoma County sheriff's deputy saw the Cadillac in a parking lot. Cass was standing near the car; Doe was in the back seat. The deputy told Cass there was a protective order in place, and that he was not allowed to contact Doe. In September, another sheriff's deputy discovered Doe and Cass together and arrested Cass for violating the protective order.

In November 2020, a City of Rohnert Park police officer saw a car with the driver's side window down, and all other windows covered by blankets. Cass was "slumped over the steering wheel." Doe was lying in the back seat. The officer arrested Cass for violating the protective order and advised him of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Cass refused to speak with the officer and was released from custody. Later that month, a Santa Rosa police officer found Cass in the Cadillac with Doe and "learned that [Cass] was on active probation." The officer determined Cass was "in clear violation of his probation." In December, a Sonoma County

sheriff's deputy stopped Cass and Doe at a gas station. Cass admitted he was on probation. After confirming this fact, and that there was a protective order in place, the deputy arrested Cass.²

The defense presented no evidence. The jury convicted Cass of willfully inflicting corporal injury on a cohabitant; assault by means likely to produce great bodily injury; fleeing a pursuing police officer while driving recklessly; misdemeanor resisting, obstructing, or delaying a police officer; misdemeanor disobeying a domestic relations order; and six misdemeanor counts of contempt of court, for violating the protective order. At the conclusion of a bench trial, the court found true various aggravating factors, including that the crime involved great violence, great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness, and that Doe was particularly vulnerable.

The trial court sentenced Cass to three years and eight months in prison and awarded presentence custody credit. Cass appealed. While the appeal was pending, the trial court amended the abstract of judgment to award Cass a total of 57 days of presentence custody credit.

DISCUSSION

Cass contends defense counsel was ineffective for failing to move to exclude testimony regarding his invocation of his right to remain silent and his probation status. And according to Cass, defense counsel's failure to

² Outside the presence of the jury, defense counsel noted he hadn't "flagg[ed]" Cass's probation status in a motion in limine. Because he didn't "want the jury to speculate" why Cass was on probation, counsel suggested the parties stipulate that Cass was on probation for misdemeanor resisting arrest at the time of the offenses. The parties did so, and the trial court read the stipulation to the jury.

object to the testimony or request a mistrial “also rendered his performance deficient.”

To establish ineffective assistance of counsel, Cass must demonstrate defense counsel’s “representation fell below an objective standard of reasonableness . . . [¶] . . . under prevailing professional norms.” (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) He “must show both that [defense] counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates, and that it is reasonably probable a more favorable determination would have resulted in the absence of counsel’s failings.” (*People v. Cudjo* (1993) 6 Cal.4th 585, 623.)

Assuming for the sake of argument defense counsel was ineffective, Cass has failed to establish prejudice. (*Strickland v. Washington, supra*, 466 U.S. at p. 697.) At trial, a single prosecution witness mentioned that Cass invoked his *Miranda* rights when questioned about the second of the eight different arrests of Cass for violating the protective order requiring him to stay away from Doe. Two prosecution witnesses referenced Cass’s probation status, and the court read a stipulation to the jury that he was on probation for misdemeanor resisting arrest. The testimony regarding Cass’s silence after receiving a *Miranda* warning was exceedingly brief; there is no indication in the record that the prosecutor urged the jury to draw any improper inferences from the testimony. The same is true with respect to the evidence that Cass was on probation—the evidence was a miniscule portion of the prosecution’s case.

The prosecution presented overwhelming evidence of Cass’s guilt. As recited above, a witness saw a man—Cass—beating “the living daylights out of” Doe. Another witness found Doe on the ground, crying in pain, “battered [and] bleeding.” Doe told her mother and emergency personnel that Cass had

inflicted the blows. And emergency personnel observed Doe's significant injuries. The jury heard how Cass drove recklessly and ran on foot to evade arrest, and that he repeatedly violated the criminal protective order. To prevail on an ineffective assistance of counsel claim, the defendant "must carry his burden of proving prejudice as a 'demonstrable reality,' not simply speculation as to the effect of the errors or omissions of counsel." (*People v. Williams* (1988) 44 Cal.3d 883, 937.) On this record, there is no reasonable probability that Cass would have achieved a more favorable result had defense counsel objected to the complained-of testimony, excluded it via a motion in limine, or requested a mistrial. (*People v. Cudjo, supra*, 6 Cal.4th at p. 623; see also *People v. Amezcua and Flores* (2019) 6 Cal.5th 886, 920.)

DISPOSITION

The judgment is affirmed.

GETTY, J.*

WE CONCUR:

MARGULIES, ACTING P.J.

BANKE, J.

A165155N

* Judge of the Solano County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.