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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAYMON ISAAH DAVIS et al.,

Defendants and Appellants.

E052983

(Super.Ct.No. INF066705)

OPINION

APPEAL from the Superior Court of Riverside County. Jeffrey L. Gunther* and Richard A. Erwood, Judges.† Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant Shaymon Isaiah Davis.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for

* Retired judge of the Sacramento Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Judge Gunther was the trial judge in the Robyn Davis case and Judge Erwood was the trial judge in the Shaymon Davis case.

Defendant and Appellant Robyn Linda Davis.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia, Lynne G. McGinnis, and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

I

SHAYMON'S APPEAL

A. Introduction

This case arises from defendants Shaymon Isaiah Davis and Robyn Linda Davis (defendants) physically abusing and endangering their 10-month-old daughter, Jane Doe (Doe). Defendants were tried and sentenced separately, and filed separate appeals.¹ Both appeals will be addressed in this opinion. We begin with Shaymon's appeal.

Shaymon appeals from judgment entered following jury convictions for battery causing great bodily injury (GBI) (Pen. Code, § 243, subd. (d));² count 2), a lesser included offense of mayhem; inflicting physical punishment on a child (§ 273d, subd. (a); count 3); and child abuse likely to cause GBI (§ 273a, subd. (a); count 4). The jury also found true the allegations that, as to counts 3 and 4, Shaymon personally inflicted GBI on

¹ Although defendants were tried separately, the trial court did not officially sever the case. The reporter's transcript includes both trials but clearly partitions the portions of the transcript relating to each defendant. The reporter's transcript of Shaymon's trial is included in volumes 1 through 3, and up to page 789 in volume 4. Robyn's trial is reported beginning at page 790 of volume 4 and includes volume 5.

² Unless otherwise noted, all statutory references are to the Penal Code.

a child under the age of five (§ 12022.7, subd. (d)). The jury found Shaymon not guilty of torture (count 1). The trial court sentenced Shaymon to 10 years in prison.

Shaymon contends the trial court improperly excluded evidence of Robyn's mental health, despite its relevance to the issue of who perpetrated the child abuse upon Doe and its exculpatory effects on Shaymon. We conclude the trial court did not abuse its discretion in excluding the evidence and we affirm the judgment against Shaymon.

B. Facts

On September 6, 2009, at approximately 8:10 p.m., Shaymon and his wife, Robyn, brought their daughter, Doe, to the Eisenhower Medical Center emergency room in Rancho Mirage. Doctor Anar Patel examined Doe. Doe was crying and appeared in pain. She also seemed detached from her parents. Doe had a large second degree burn on her abdomen. Patel estimated the burn covered 9 percent of Doe's body and was likely caused by contact with a hot surface or object, such as a frying pan. The burn did not appear to have been accidentally inflicted. Patel concluded it was consistent with child abuse and estimated it was inflicted about 12 hours earlier, around 8:00 a.m. Patel noticed Doe also had bruises on her face and neck.

Shaymon told Patel that, during the morning of September 6, 2009, Robyn had left Doe in Shaymon's care while she was at work. That evening, when it was Doe's bedtime, defendants noticed the burn on Doe's abdomen. They told Patel they did not know how it happened. Patel suspected child abuse. X-rays revealed Doe also had two right wrist fractures, one in the radius bone and the other in the ulna. The radius bone had a large chip fracture. The ulna fracture appeared to have been from being

compressed or “smashed in.” Patel testified that such injuries typically would be from falling when walking but Doe had not started walking and did not appear to be trying to walk. Patel observed that Doe seemed resigned to remain lying in the bed, indicating she did not walk and was not accustomed to being mobile on her own.

Doe was transferred to Loma Linda University Medical Center. Dr. Thomas Sherwin of the pediatric emergency department examined Doe on September 7, 2009.³ Sherwin specialized in child abuse. Doe appeared to be in a lot of pain and was “negative to the touch,” which meant she may have experienced trauma and was not responding as a normal child would. Sherwin observed that Doe had second-degree burns primarily on her abdomen, covering 10 percent of her body, and also had bruising, including circular, pinpoint bruises on her forehead. Doe’s burns were life threatening. Sherwin could not tell whether they were from a single or multiple contacts with a hot surface, such as a frying pan but, if it was one contact, the hot surface had to have been held in place for 30 seconds to a minute. Doe’s burns were extremely painful and would have caused Doe to cry or scream. Sherwin gave Doe morphine for the pain.

Doe’s pinpoint bruises were consistent with someone poking Doe in the face. Doe had an unusual number of bruises for a child of her age which were consistent with being intentionally inflicted. Sherwin looked at Doe’s X-ray showing a fracture of Doe’s right

³ It appears from the reporter’s transcript that Sherwin initially erroneously testified he examined Doe on September 16, 2009. Sherwin later testified that he treated Doe on September 7, 2009, and thereafter Doe was transferred to the Arrowhead burn center.

wrist, which could have occurred on or before September 6, 2009. Sherwin believed Doe's injuries resulted from deliberate abuse.

Because of the seriousness of Doe's burns, Doe was transferred to the burn center at Arrowhead Regional Medical Center, where she was treated by Dr. Victor Joe. Joe concluded Doe sustained second degree burns, covering 10 percent of her body, and the burns were intentionally caused by contact with a hot surface.

On September 16, 2009, after Joe examined and treated Doe's burns, Doe was examined by Dr. Clare Sheridan, director of the child abuse and neglect clinical team at Riverside Regional Medical Center. Sheridan also determined that Doe was unable to walk and was negative to touch, meaning Doe anticipated harm or hurt. She had severe burns on her lower chest, mid chest and abdomen. Doe also had a healing burn behind her right ear. Sheridan believed Doe's burns were caused by at least three contacts with hot objects. If untreated, Doe's burns could have led to sepsis, dehydration, collapse of the cardio respiratory system, and death.

In Sheridan's opinion, Doe's bruises around her eyes and jaw were very unusual for a child of Doe's age. The bruises most likely were not caused accidentally. They were the type commonly occurring in abuse cases and Doe had more bruises than normally found on a child her age. Sheridan also observed X-rays of Doe's wrist fracture and believed the injury was not caused by Doe falling but, rather, resulted from child abuse.

On September 9, 2009, Police Detective Nava and Police Officer Moulin went to Shaymon and Robyn's home in Cathedral City and spoke to them. Nava collected the

pajamas Doe was wearing the night she was taken to the hospital. Shaymon told Nava that Doe's skin had stuck to the pajamas. A couple hours later, Shaymon voluntarily went to the police station to talk with Nava about Doe's injuries. Shaymon's interview was video-recorded and played for the jury.

Shaymon stated in his recorded interview that on September 6, 2009, he woke up at 4:00 a.m. and took Robyn to work. Doe was in the car with them, wearing only a diaper, and was fine. When Shaymon and Doe returned home, they went back to sleep. At 7:00 or 8:00 a.m., Shaymon got up, gave Doe a bottle, and then the two went back to sleep. Doe took another nap around 10:00 a.m. and woke up around 11:00 a.m. Robyn called at 1:15 p.m. to get a ride home from work. Shaymon dressed Doe in a "onesie," and Doe and Shaymon went to pick up Robyn. The three returned home and took a nap. At around 3:00 p.m., Shaymon woke up when he heard Robyn go to the bathroom. Shaymon gave Doe a bottle and they all went back to sleep. Shaymon got up around 6:00 p.m. and, while changing Doe's diaper, noticed her skin peeling off. He showed Robyn Doe's injury. Robyn said they needed to take Doe to the hospital. On the way to the nearest hospital, Robyn looked at her insurance card and told Shaymon to go to Eisenhower Medical Center, because it was covered by her insurance.

Shaymon told Nava that Doe's bruises were because Doe was starting to walk and fell down and bumped her head. Shaymon claimed that while Doe was with him on September 6, 2009, Doe never screamed or indicated she was hurt. Shaymon said he did not know how Doe was burned and denied hurting her.

Brittany McDonnell, Shaymon's former girlfriend and mother of one of Shaymon's children, testified that on September 16, 2009, Shaymon called her and told her not to speak to Child Protective Services or anyone else about Doe's case.

On September 23, 2009, Nava and other officers went to Shaymon's apartment and knocked on the front door around 5:00 p.m. Shaymon cracked open the door and looked at Nava. Nava told him to open the door. Shaymon quickly shut the door and latched the deadbolt. Nava kicked the door open, entered the apartment, arrested Shaymon, and took him into custody.

Shaymon testified to many of the same facts stated during his video-recorded interview with Nava on September 9, 2009. Shaymon said he had been at a party until about 1:00 a.m., on September 6, 2009. After getting up that same morning at 4:00 a.m. and dropping Robyn off at work, he and Doe returned home and went to sleep. They got up at 7:00 a.m. and Doe played with her toys while Shaymon played video games. At around 10:00 a.m., he put Doe in her crib and the two went back to sleep. At that time, Doe was only in a diaper and Shaymon did not notice Doe was injured. An hour later, Shaymon woke up, checked on Doe, and changed her diaper. Nothing was wrong with her then. After Shaymon and Doe ate, Shaymon gave Doe a bath, and then returned to playing computer games while Doe played with her toys.

At around 1:00 p.m., Shaymon dressed Doe in pajamas and picked up Robyn at work. Doe was not crying. She fell asleep in the car. Shaymon and Doe took a nap when they returned home. When Shaymon got up and checked on Doe at 3:00 p.m., she was calm. They went back to sleep until 6:00 p.m. Shaymon checked on Doe while

Robyn took a shower. When Shaymon picked up Doe and opened her pajamas, Doe did not cry. Shaymon noticed Doe's skin was peeling and sticking to her pajamas. There were no blisters. Shaymon did not think it was serious but showed Robyn, who insisted they take Doe to the hospital. While driving towards Desert Regional Hospital, Robyn told Shaymon to go to Eisenhower Medical Center instead because it was covered by her insurance. They then went there.

Shaymon further testified that Doe bruised her face when she pushed her toys. Doe was crawling and was able to stand and hold onto things, such as furniture, to move around. She did not climb onto furniture. Before September 6, 2009, Shaymon never believed Robyn posed a danger to Doe. He never saw Robyn do anything to harm Doe. Shaymon was unaware of Doe sustaining any unusual injuries before then. Shaymon said he did not know how Doe received her stomach burn or wrist injury.

Shaymon admitted pleading guilty to misdemeanor battery for an incident in 2007, involving McDonnell. Shaymon and McDonnell had gotten into an argument. McDonnell's sister struck him with a pole and McDonnell hit Shaymon with her fist. Shaymon then pushed McDonnell. He denied choking McDonnell. Shaymon admitted telling McDonnell not to talk to the police or child protective services about Doe, but claimed he did so because McDonnell had nothing to do with the matter. As to closing the door on Nava on September 23, 2009, he did this because he was naked and was going to get dressed. He did not remember locking the dead bolt but might have done so out of habit.

C. Admissibility of Robyn's Mental Records

Shaymon contends the trial court abused its discretion in excluding as irrelevant evidence of Robyn's mental health, including her suicide attempt. Shaymon argues the evidence was relevant in establishing that Robyn, rather than Shaymon, may have perpetrated the child abuse. Shaymon further argues the evidence also explains why Robyn insisted on taking Doe to Eisenhower Medical Center, rather than the closer emergency room at Desert Regional Hospital, where Robyn was treated for her suicide attempt. Shaymon claims this evidence reflected Robyn's consciousness of guilt.

1. Procedural Background

After conducting an in camera hearing with Shaymon's counsel, the trial court granted Shaymon's pretrial motion for production of Robyn's 2009 and 2010 psychological records. The trial court reviewed the requested records, which all pertained to Robyn's hospital visit in June 2009, following a suicide attempt. The court concluded defense counsel provided a sufficiently detailed and complete statement justifying access to Robyn's mental health records and therefore Shaymon was permitted to review them.

At trial, Shaymon testified that Robyn told him to take Doe to Eisenhower Medical Center, even though they were almost at Desert Regional Hospital. Robyn had been to Desert Regional Hospital before, in June, for treatment for attempted suicide. The trial court sustained the prosecutor's objection to this statement as irrelevant but then permitted defense counsel to make an offer of proof in camera. Defense counsel explained that on Father's Day, on June 21, 2009, Robyn and Shaymon argued over

Shaymon taking Doe to the park. Robyn showed up at the park acting strangely, after taking a large amount of Tylenol PM. The police arrived and transported Robyn to Desert Regional Hospital, where she was treated for the overdose.

Defense counsel argued this evidence was relevant because it showed that Robyn did not want to take Doe to Desert Regional Hospital because Robyn was embarrassed that she had attempted suicide and she might be perceived by the hospital staff as a danger to herself or others, and this would cast suspicion that she inflicted injury on Doe. Defense counsel stated that “the only explanation as to how the child was injured from my client’s perspective” was that, because of Robyn’s mental condition, Robyn injured Doe while Shaymon was sleeping during the afternoon of September 6, 2009.

The prosecutor objected to allowing evidence of Robyn’s suicide attempt on the ground it was inadmissible character evidence (Evid. Code, § 1101, subd. (a)). The prosecutor argued Robyn attempted suicide because Shaymon beat her. He also noted that about a week before the September 6, 2009, incident, around the time Robyn kicked Shaymon out of the house, Shaymon put a knife to Robyn’s throat and Robyn noticed bruises on Doe.

The trial court concluded it was speculative as to Robyn not taking Doe to Desert Regional Hospital because Robyn had been treated there for her suicide attempt and, therefore, evidence of this was inadmissible. In addition, the court concluded evidence of Robyn’s suicide attempt was irrelevant and not probative, particularly since people who attempt suicide do not necessarily harm children.

2. *Applicable Law*

Only relevant evidence is admissible and all relevant evidence is admissible. (Evid. Code, §§ 350, 351.) Relevant evidence, “no matter how weak it may be . . . tends to prove the issue before the jury.” (*People v. Freeman* (1994) 8 Cal.4th 450, 491.) Evidence Code section 352 excludes evidence that is more prejudicial than probative. The trial court exercises broad discretion in determining the relevancy of evidence, as well as its probative and prejudicial effect. (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1048; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124.) Prejudice does not flow from relevant evidence but from prejudging a person based on extraneous factors. (*People v. Harris* (1998) 60 Cal.App.4th 727, 737, citing *People v. Zapien* (1993) 4 Cal.4th 929, 958.)

3. *Discussion*

The trial court did not abuse its discretion in excluding evidence of Robyn’s suicide attempt in June 2009, as irrelevant evidence. Even though the trial court granted Shaymon’s motion for discovery of Robyn’s mental health records, this did not establish that the records were actually admissible at trial. Discovery of the records was permitted based on defense counsel establishing that the records might contain evidence admissible at trial or lead to the discovery of admissible evidence. Pretrial discovery is more liberal than the admissibility of evidence at trial. (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1318.) When the court granted discovery of Robyn’s mental health records, there was no determination that the records were actually admissible. The trial court later reviewed the records and appropriately determined at trial that evidence of

Robyn's suicide attempt was irrelevant and not sufficiently probative of any issues in dispute.

Shaymon argues that evidence of Robyn's suicide attempt was relevant to establishing that Robyn had an ulterior motive for not taking Doe to Desert Regional Hospital. He claims the evidence shows consciousness of guilt in that she feared the staff at Desert Regional Hospital would suspect she caused Doe's burn injury, based on Robyn's previous treatment for her suicide attempt. This is pure, unfounded speculation, particularly since both Shaymon and Robyn testified that Robyn decided to take Doe to Eisenhower Medical Center because Robyn believed her insurance did not provide coverage at Desert Regional Hospital. Shaymon argues that they had insurance coverage for emergency visits at any hospital, but Shaymon testified he believed Doe's injury was not serious. Even if Robyn believed Doe's injury was serious, she may not have been aware coverage would be provided for emergency treatment at any hospital or she may have believed it was best to take Doe where there was insurance coverage for nonemergency, as well as emergency care.

Evidence of Robyn's suicide attempt was also not relevant and had no probative value since there was no evidence of Robyn harming Doe prior to the burn incident. There was also no evidence Robyn's suicide attempt or mental condition was in anyway likely to result in Robyn inflicting harm on anyone other than herself. There was thus no nexus between Robyn's suicide attempt and Doe's burn injury, particularly since the suicide attempt occurred 10 weeks before the charged crimes and, according to the prosecutor, occurred because Shaymon beat Robyn.

Even if the trial court erred in excluding evidence of Robyn's suicide attempt, such error was harmless. There is no reasonable probability that Shaymon would have achieved a more favorable result had the evidence been permitted. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) There was no evidence that Robyn had harmed Doe in the past, and she was at work when in all likelihood Doe was burned. There was unrefuted expert testimony by Dr. Patel that the burn injury was inflicted about 12 hours earlier, around 8:00 a.m., while Robyn was at work and Doe was in the sole care of Shaymon. Furthermore, if evidence of Robyn's suicide attempt was permitted, the court likely would have also permitted evidence showing that Robyn's suicide attempt was because Shaymon beat her. Such evidence likely would have had an adverse impact on Shaymon's defense because it showed that he was violent and capable of inflicting harm on others. We therefore conclude the trial court did not abuse its discretion in excluding evidence of Robyn's mental health and, even if there was error, it was harmless. The judgment against Shaymon is affirmed.

II

ROBYN'S APPEAL

A. Introduction

Robyn appeals from judgment entered following a jury conviction for child abuse or endangerment likely to cause GBI (§ 273a, subd. (a); count 4). The trial court sentenced Robyn to four years on formal probation and 120 days in custody, which included 36 days of presentence custody and 84 days of community service. Robyn contends there was insufficient evidence to support her conviction of child abuse or

endangerment. We conclude the evidence was sufficient and affirm the judgment against Robyn.

B. Facts in Robyn's Trial

Although Robyn and Shaymon were jointly charged with child abuse (§ 273a, subd. (a); count 4), Robyn and Shaymon were tried separately, and separately appeal their judgments. In both trials, the evidence is essentially the same with the exception that Robyn and Shaymon did not testify in each other's trials, but testified in their own trials.

Robyn testified that Shaymon was in custody between August 2008 and May 2009. When he was released from custody, he told her he wanted to be a good father and returned to living with Robyn and Doe. In July 2009, Robyn obtained a restraining order against Shaymon because of his drinking. When he drank too much he became "mean" but Robyn claimed he never struck her or Doe. Robyn obtained the restraining order to prevent Shaymon from taking Doe from their home, which Shaymon often threatened he would do.

Robyn testified that Doe bruised easily and was bruised even after being cared for by child protective services after Doe's hospitalization for the burn injury in September 2009. Robyn believed Doe's bruises were old and from Shaymon playing too rough with Doe. She did not know how they occurred. Robyn further testified that Doe's burn injuries had already scabbed over several days before September 6, 2009. Robyn claimed she had treated Doe's burns with A&D ointment and Motrin. Shaymon had told Robyn that he had been jumped by people at a playground when he was with Doe, and Doe might have been burned when she was in contact with the hot playground asphalt.

The following testimony also was provided in Robyn's, but not Shaymon's trial. Police Detective Nava testified that, when Nava went to gather evidence at Shaymon and Robyn's apartment on September 9, 2009, Robyn told her that before Robyn left for work on September 6, 2009, Doe did not appear to have any injuries. When Robyn returned from work around 1:00 p.m., Shaymon, Doe, and Robyn all took a nap. Robyn woke up around 6:00 p.m. and took a shower. While in the shower, Shaymon brought Doe to her and showed her where Doe's skin was peeling off and sticking to Doe's pajamas. Robyn immediately said they needed to go to the hospital. Robyn told Nava she did not know how Doe sustained her injuries.

Nava further testified that Robyn told her she had had problems with Shaymon drinking and had obtained a restraining order against him a few months before the charged crime because Shaymon had become physically violent with her and threw things. Robyn told Shaymon to leave because Doe was not safe around him. When Robyn filed for a restraining order on July 15, 2009, she stated in her papers that Shaymon had told her no one could protect her or Doe if Shaymon wanted to act out against them. Robyn also had requested in her restraining order petition supervised visits because Doe was bruised whenever Shaymon took care of her.

Robyn requested another restraining order on August 11, 2009, a month before the burn incident. In support of the restraining order request, Robyn wrote, "My husband has problems with drugs and alcohol. When I left my daughter in his care, I came home to her having injuries that I am not sure if were [*sic*] caused by abuse or negligence. I feel my daughter is in danger of being taken by him. He has told me many times

[unintelligible] his hands on her, that I will never see her again. He has domestically abused me. . . . He needs help before he can be alone with her, and I request Court-ordered family counseling.” Robyn also wrote that Shaymon “Has a history of domestic violence,” which included “Domestic battery against another mother of his child, takes the baby and says I can’t see her, kidnapped his other daughter”

Robyn told Nava that, when Shaymon drank, he became crazy and physical. Robyn said she had previously thrown him out of the house because of his drinking and her concern for Doe’s safety. He had only been back living with Robyn and Doe for two weeks before Doe was burned. Robyn said that, despite her disagreements with Shaymon, she nevertheless would protect Shaymon because she believed he was basically a good person. Robyn told Nava she would not tell the police even if Shaymon harmed Doe.

After Nava arrested Shaymon and Robyn on September 23, 2009, Robyn told Nava during a recorded interview that she believed Shaymon did not burn Robyn because there was nothing in the house he could have used to burn her. Robyn conceded that when Shaymon returned home after several months of incarceration, Doe kept getting bruises. One time, when Robyn noticed a bruise under Doe’s eye, she told Shaymon, “You better not keep doing whatever your doing” and “I better not come home and my baby have one more bruise.” Robyn claimed Shaymon was violent with her but not with Doe. Robyn told Nava she could not “help it” if Shaymon harmed Doe when she was not around, and she did not think he would hurt Doe because Shaymon promised to stop drinking. Robyn admitted she sent McDonnell an email stating, “Don’t let your baby see

Shaymon cause he's putting bruises on my baby." Robyn wrote in support of her request for a restraining order against Shaymon that "[Shaymon t]old me no one can protect me or my daughter from him" and "[Shaymon] always chokes me and says he'll choke the life out of me and take my daughter. He held a knife to my throat."

McDonnell testified Robyn had sent her an email advising McDonnell to keep Shaymon away from McDonnell's baby because, when Shaymon drank, Doe had ended up with bruises. In addition, Dawn Raimi, Robyn's mother, testified that several times she had observed Shaymon and Robyn arguing and, if Shaymon had been drinking, he could get "crazy" when arguing. Raimi claimed Shaymon often neglected Doe. Often, when Robyn was working, Shaymon brought Doe to Raimi's house and would leave to play games on the computer or play basketball with friends. On one occasion, when Shaymon took Doe to visit his family, Doe returned with several bruises. Raimi testified that whenever Raimi noticed bruises on Doe and confronted Shaymon about it, he would give her "some lame excuse on how the bruises got there."

Raimi told Nava during a recorded interview shortly after the burn incident that she bought a house close to Robyn because of Shaymon's behavior. Robyn was "scared to death" of Shaymon. After Robyn requested a restraining order, Shaymon was violent with Raimi and threatened Robyn over the phone. Robyn told Raimi regarding Shaymon, "If he's not abusing [Doe], he's neglecting her." Raimi had noticed bruises on Doe's face and chest. Doe did not want to be near Shaymon because she was afraid of him. Shaymon would drop Doe on the ground, swing her in circles in her car seat, and force her hands behind her back to make her squeal.

The medical expert testimony in Robyn’s trial was essentially the same as in Shaymon’s trial, with the exception that in Robyn’s trial, Dr. Sherwin added that X-rays showed that Doe also had multiple rib fractures, which were in the process of healing. Dr. Sheridan also testified that Doe had three or four healing rib fractures. She also had four separate contact burns, including on her right shoulder, behind her right ear, and on her chest and abdomen, and approximately 14 bruises in various stages of healing.

C. Discussion

Upon a challenge to the sufficiency of the evidence, we examine the whole record in the light most favorable to the judgment below and determine whether or not the record discloses substantial evidence upon which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *People v. Ceja* (1993) 4 Cal.4th 1134, 1138.) “In making this determination, we ““must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.””” (*People v. Rayford* (1994) 9 Cal.4th 1, 23.) Reversal for insufficiency of evidence “is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331; see also *People v. Hill* (1998) 17 Cal.4th 800, 848-849.)

Here, there was substantial evidence supporting Robyn’s conviction for child abuse or endangerment in violation of section 273a, subdivision (a). A section 273a, subdivision (a) conviction requires evidence that the defendant “(1) willfully and directly inflicts ‘unjustifiable physical pain or mental suffering’ upon the child, (2) merely

willfully ‘permits’ the infliction of such pain or suffering or injury to the child’s ‘person or health,’ or (3) [having the care or custody of the child,] willfully places or permits the child to be placed ‘in such situation that its person or health is endangered. . . .’” (*People v. Vargas* (1988) 204 Cal.App.3d 1455, 1465; 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1989) Crimes Against Decency and Morals, § 840, p. 956.)

“‘Violation of section 273a, subdivision (a) “can occur in a wide variety of situations: the definition broadly includes both active and passive conduct, i.e., child abuse by direct assault and child endangering by extreme neglect.’ [Citation.] . . . Section 273a[, subdivision (a)] is ‘intended to protect a child from an abusive situation in which the probability of serious injury is great.’ [Citation.] ‘[T]here is no requirement that the actual result be great bodily injury.’ [Citation.]” [Citation.]’ (*People v. Valdez* (2002) 27 Cal.4th 778, 784.)” (*People v. Cockburn* (2003) 109 Cal.App.4th 1151, 1160.) “This crime requires ‘circumstances or conditions likely to produce great bodily harm or death.’ (Pen. Code, § 273a, subd. (a).)” (*People v. Felton* (2004) 122 Cal.App.4th 260, 270.)

Robyn’s conviction in the instant case is based on facts establishing that she committed child endangerment by extreme neglect; by willfully placing or permitting Doe to be placed in such situation in which the probability of serious injury was great. (*People v. Vargas, supra*, 204 Cal.App.3d at p. 1465; *People v. Cockburn, supra*, 109 Cal.App.4th at p. 1160.) Robyn thus committed felony child endangerment by inflicting harm upon Doe indirectly—i.e., by leaving Doe with Shaymon, knowing that it was likely or foreseeable that Shaymon would inflict GBI upon Doe. Under such circumstances, a conviction for felony child endangerment required the jury to find

criminal negligence. (*People v. Valdez, supra*, 27 Cal.4th at pp. 781, 787-791.) Robyn argues there was insufficient evidence of criminal negligence because there was no evidence she was aware that Shaymon would inflict GBI on Doe. Robyn only noticed Doe was bruised after Doe was with Shaymon, and thought the bruises were caused because Shaymon was too rough with Doe. Robyn claimed she had never seen Shaymon hurt Doe and was unaware of Doe's wrist and rib fractures.

But “Under the criminal negligence standard, knowledge of the risk is determined by an objective test: “[I]f a reasonable person in defendant’s position would have been aware of the risk involved, then defendant is presumed to have had such an awareness.” [Citations.]” (*People v. Valdez, supra*, 27 Cal.4th at p. 783, quoting *Williams v. Garcetti* (1993) 5 Cal.4th 561, 574.) Here, there was substantial evidence that a reasonable person in Robyn’s position, knowing what she knew and observed, would have been aware of the risk of Doe suffering GBI if left alone with Shaymon. Such evidence included Nava’s testimony that Robyn told her that she had had problems with Shaymon drinking and had thrown him out of the house because Doe was not safe around him. Shaymon had told her no one could protect her or Doe from him if he wanted to harm them.

On two separate occasions, on July 15, 2009, and August 11, 2009, Robyn obtained restraining orders against Shaymon because he had acted violently toward her and threw things. Robyn also requested that Shaymon’s visits with Doe be supervised because Doe was bruised whenever Shaymon took care of her. In Robyn’s August 2009 restraining order petition, several weeks before the charged offenses, Robyn stated in her supporting declaration that Shaymon domestically abused her and “needs help before he

can be alone with [Doe].” Robyn also stated that she suspected Shaymon had been injuring Doe by either abusing or neglecting her.

Robyn told Nava that when Shaymon drank, he became crazy and physical. Robyn even warned McDonnell not to leave her child with Shaymon because Shaymon was bruising Doe. Robyn knew Shaymon had a history of domestic battery against McDonnell as well. In addition, Robyn’s mother testified she, too, noticed Doe was bruised whenever she was left with Shaymon and feared for Doe’s safety when she was left with Shaymon. Because of her concern for Robyn and Doe, Raimi had moved near Robyn. Raimi described Shaymon as crazy. Raimi told Nava that Shaymon had been violent towards Raimi, threatened Robyn, and physically abused, if not neglected, Doe. Nevertheless, Robyn left Doe with Shaymon while Robyn was at work and conceded that, even if Shaymon injured Doe, Robyn would not tell the police.

The totality of the evidence was more than sufficient to support a finding that a reasonable person would have foreseen that leaving Doe in Shaymon’s sole care likely would result in Shaymon causing great bodily harm to Doe. Despite Robyn’s recognition that Doe should not be left with Shaymon because of his violent, abusive tendencies, and apparent frequent physical harm of Doe, Robyn left Doe alone with Shaymon on September 6, 2009, when it was foreseeable Shaymon would cause great bodily harm to Doe, who was a vulnerable, helpless 10-month-old child. We therefore affirm the judgment against Robyn.

III

DISPOSITION

The judgments against Shaymon and Robyn are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

HOLLENHORST
Acting P.J.

KING
J.