

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

REBECCA MARIE WELCH et al.,

Defendants and Appellants.

E053250

(Super.Ct.Nos. RIF136008 &
RIF144323)

OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz,
Judge. Affirmed.

Janice M. Lagerlof, under appointment by the Court of Appeal, for Defendant
and Appellant Rebecca Marie Welch.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and
Appellant Timothy James Welch.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Lilia E. Garcia and Felicity
Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

This case involves two defendants: Rebecca Welch (Rebecca) and her husband, Timothy Welch (Timothy).¹ A jury found Rebecca guilty of (1) second degree murder (Pen. Code, § 187, subd. (a)),² and (2) abuse of an elder or dependent adult (§ 368, subd. (b)(1)). In regard to the abuse conviction, the jury found true the enhancement allegation that Rebecca's abuse proximately caused the victim's death. (§ 368, subd. (b)(3).) The trial court sentenced Rebecca to prison for an indeterminate term of 15 years to life.

A second jury found Timothy guilty of (1) involuntary manslaughter (§ 192, subd. (b)), and (2) abuse of an elder or dependent adult (§ 368, subd. (b)(1)). In regard to the abuse conviction, the jury found true the enhancement allegation that Timothy's abuse proximately caused the victim's death. (§ 368, subd. (b)(3).) The trial court sentenced Timothy to prison for a term of 10 years.

Rebecca raises three issues on appeal. First, Rebecca asserts the evidence supporting her convictions for murder and elder abuse do not meet the substantial evidence standard. Second, Rebecca contends the trial court erred by not allowing her to present evidence impeaching the credibility of the victim's half-brother. Third, Rebecca asserts the trial court erred by not permitting her to present further evidence

¹ We use defendants' first names for the sake of clarity, due to defendants sharing the same last name. No disrespect is intended.

² All subsequent statutory references will be to the Penal Code unless otherwise indicated.

about her belief that the victim was terminally ill. Rebecca also joins in the arguments raised by Timothy. We affirm the judgment.

Timothy also raises three issues on appeal. First, Timothy asserts the evidence supporting his manslaughter and abuse convictions does not meet the substantial evidence standard. Second, Timothy contends his convictions violate due process because the relevant laws are vague, in that an ordinary person would not know the facts of this case could lead to criminal prosecution. Third, Timothy asserts his custody credits must be corrected. Additionally, Timothy joins the arguments raised by Rebecca. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

The female victim was born in April 1936. The victim was mentally disabled, with the capabilities of a four or five year old. The victim's mother cared for her until the mother's death in the mid-1990s. After the mother's death, the victim moved into the home of her half-brother, David Allred. Allred's wife became the victim's primary caretaker. Allred's wife moved out of Allred's home around 2001 or 2002. At that point, a neighbor across the street from Allred's home, Sharon Booth, became the victim's primary caregiver.

Allred was not the victim's primary caregiver because (1) he was often out of town due to his work as a beekeeper, and (2) he was a convicted sexual offender so therefore he did not feel it would be appropriate for him to bathe and care for the victim. Booth enrolled in Riverside County In-Home Supportive Services (IHSS), so she would

be paid for taking care of the victim. In summer 2004, Booth started school. Booth asked Allred if her sister, Rebecca, could take over caring for the victim. Allred agreed, and Rebecca began caring for the victim.

B. MOVE TO REBECCA'S HOME

In 2004, after Rebecca took over the victim's care, the victim suffered a stroke. The stroke changed the victim's physical capabilities—she needed a wheelchair and “started going downhill”; however, her mental capabilities remained unchanged, in that she was still able to communicate. After the stroke, the victim needed more care, therefore, she moved into Rebecca's home. It was easier for Rebecca to care for the victim in her own home because she had five children and she “couldn't just abandon her kids” to provide care for the victim. Rebecca and Timothy were designated as the victim's caregivers with IHSS.

Allred visited the victim once per week or once every other week, depending on whether he was in town. The victim's doctors were at Kaiser Hospital. Allred would receive the notices of the victim's medical appointments and inform Rebecca of the dates and times. The victim usually had a doctor's appointment once per month. Allred would call Rebecca to be updated on the results of the medical appointments.

Melynda Herrera is Rebecca's cousin. In 2004, Rebecca had back surgery and Timothy had knee surgery, so Herrera helped them clean their house. The house often smelled of rotting food and there were “cockroaches everywhere.” Herrera would see the victim during visits. When Herrera asked the victim how she was doing, the victim would cry. When the victim cried, Rebecca yelled at her. Rebecca told the victim “she

doesn't have it that bad." In 2005, Herrera noticed the victim was losing weight.

Herrera was concerned for the victim because she never saw the victim with fresh water or food.

C. 2006 HOSPITAL VISIT

On September 2, 2006, Rebecca took the victim to Kaiser's emergency room because the victim was not responding, in that she was not "waking up." Dr. Simental examined the victim. Dr. Simental discovered the victim's hemoglobin level was "very low." Hemoglobin reflects the volume of blood in the body. If a person is lacking hemoglobin, then the body's tissues are not receiving sufficient oxygen. The victim's hemoglobin measured 3.2; the normal range would be 12 to 14. A hemoglobin level below 8.0 requires a blood transfusion; Dr. Simental did not expect the victim to survive. Dr. Simental found the victim had brown blood in her stool, which indicated a slow bleed in her gastrointestinal tract—as opposed to red blood reflecting a fast bleed. The slow bleed could have been happening for months or years. Dr. Simental ordered a blood transfusion for the victim. The victim received four units of blood, which was a "significant" transfusion.

The victim was placed in intensive care. Dr. Ambastha cared for the victim after she was admitted to the hospital. Dr. Ambastha recommended a Do Not Resuscitate (DNR) order for the victim because she was "70 years old and mentally retarded," with multiple pressure sores on her body, indicating a long time spent lying in bed. A DNR order meant medical treatment should continue, but CPR should not be performed if the

victim's heart was to stop. In the victim's case, a DNR order was not entered because the victim's legal guardian, Allred, was unavailable; only Rebecca was with the victim.

Dr. Ambastha found the victim had suffered a fractured right hip. An orthopedic surgeon suggested not treating the fracture because the victim's overall medical condition was not good, and the fracture was old and probably had begun healing. Dr. Ambastha did not look for the source of the bleeding in the victim's gastrointestinal tract because (1) he assumed he "would not be able to find something that [he would] be able to fix"; and (2) giving the victim sedatives, in order to perform the investigatory procedures, could be dangerous for the victim.

The victim stayed in the hospital for four days—until September 6, 2006. When the victim was discharged, her hemoglobin level was 11.2, she was more responsive, and her condition was stable. Dr. Ambastha did not believe a person with a hemoglobin level of three would be able to survive. However, Dr. Ambastha explained the victim may have had a very slow bleed, which permitted her body to adjust to the lower blood volume. For example, if a person's hemoglobin level slowly dropped from 11 to 10, then the body could adjust, and as it slowly dropped from 10 to nine, then the body could adjust again, and so on.

Upon discharge of a patient such as the victim, Dr. Ambastha would have advised the caregiver to return the victim to the hospital if the victim suffered black stool, bleeding, blackish vomit, rigor, and/or weight loss. Black stool and black vomit indicate blood in the gastrointestinal tract, because the blood turns black when it combines with stomach acid. Rebecca argued with Dr. Ambastha; Rebecca believed the

victim should not be released from the hospital while she was still bleeding. Rebecca wanted Dr. Ambastha to conduct a scoping test on the victim, but he refused because the procedure would be too dangerous for the victim.

Kaiser normally would have scheduled a follow-up appointment for the victim to see her primary care physician approximately four weeks after her release from the hospital to ensure her blood count was stable and the bleeding had stopped. In this case, Dr. Ambastha ordered the victim to have a follow-up appointment two weeks after being discharged from the hospital in order to determine if she needed another blood transfusion. The follow-up appointment was usually scheduled at the time of discharge or shortly thereafter. The victim never saw her primary care physician after the September 2006 hospital stay.

In October or November 2006, Herrera went to Rebecca's home. Herrera found the victim on the floor with her upper body in a bedroom and her legs in a hallway. The victim was naked and there was feces on her buttocks. The victim reached up to Herrera and began crying. Herrera went to Rebecca and Timothy's bedroom. The bedroom door was closed. Herrera opened the door and found Rebecca and Timothy lying in bed watching television.

Herrera asked, "What the hell? What's going on here? Why is she naked?" Rebecca explained that Timothy was planning to bathe the victim. Timothy then "jumped up" to bathe the victim. Herrera suggested Rebecca return the victim to Allred's home. Earlier in 2006, Herrera suggested Rebecca leave the victim at the hospital. Herrera was concerned the victim would die in Rebecca and Timothy's care

and if the victim's medicine or electrolytes were not as they should be, then Rebecca and Timothy would "go to jail for murder." Rebecca declined to leave the victim at the hospital because Rebecca "had a cable bill that was like \$500."

In 2007, Rebecca and Timothy were obtaining the maximum payouts from IHSS; it paid for a maximum of 283 hours of care per month, and Rebecca and Timothy claimed 283 hours of care, which amounted to approximately \$2,500 per month. Rebecca and Timothy were only paid for the time they provided care to the victim, so if the victim were in the hospital, then they would not be paid for that time.

D. THE VICTIM'S DEATH

After being released from the hospital in September 2006, until her death in April 2007, the victim periodically vomited a black substance that appeared to contain blood. The victim was also losing weight during that time period. Rebecca and Timothy did not take the victim to a doctor after the September 2006 hospitalization. In April 2007, Rebecca and Timothy's neighbors complained about the victim's "continual crying and screaming out at night." Therefore, on the night of April 11, 2007, Rebecca and Timothy decided to move the victim to a different room in the house—from a den to a bedroom.

In the process of moving the victim's bed from the den to the bedroom, the victim was placed in the bathtub because she had vomited on herself. While in the bath, the victim vomited a black substance. Once the bed was ready with new bedding, the victim was moved to the bed. Timothy adjusted her position on the bed. While Timothy was moving the victim, he pulled the victim up too far and the victim

“knocked her head”—the back of the victim’s head may have struck the headboard or a bookcase. Timothy said, ““Oh, shit.”” Timothy briefly checked the victim’s head.

The following morning, April 12, Rebecca gave the victim an Ensure to drink. The victim spilled the beverage. Rebecca struck the victim’s abdomen three or four times with a cord; the cord was attached to the remote that raised and lowered the victim’s bed. Rebecca would strike the victim with a cord in order to make the victim eat or stop crying. Rebecca would strike the victim’s arms and legs with an extension cord three times per week or less when the victim refused to eat. Rebecca would yell at the victim to eat. In response, the victim would cry, try to block the strikes “with her good arm and just say, ‘Ow.’” On one occasion, when the victim cried, Rebecca taped the victim’s mouth closed. At times, Rebecca would call the victim “a bitch.”

Approximately one hour after the Ensure and hitting incident on April 12, while Rebecca was in her own room, she instructed her daughter to put the victim’s dentures in the victim’s mouth. The daughter, Jane Doe, went to the victim’s bedroom. Doe felt there was “something wrong” with the victim because the victim did not move when Doe shook the victim’s leg. Doe told Rebecca about the victim not responding, and Rebecca went to check on the victim.

Rebecca shook the victim, but the victim did not respond. Rebecca told Doe to call 911. Rebecca heard a gurgling sound emanating from the victim’s throat so she initiated the Heimlich maneuver on the victim. The victim’s stomach felt “hard like stone,” but the rest of her body was “limp like a rag doll.” As Rebecca patted the victim on the back, black vomit spewed from the victim’s mouth. The vomit went

“everywhere.” In the days before April 12, the victim had vomited a black substance approximately four times.

Paramedics, firefighters, and police arrived at the house. When Firefighter-Paramedic Calvillo entered Rebecca’s house, he notice it was “unkept” with dishes piled in the kitchen sink. When Firefighter Calvillo entered the victim’s bedroom, he saw the lower half of the victim’s body was “hanging off the bed.” The victim’s legs were parallel to the floor; Firefighter Calvillo believed the victim’s body was already in rigor. Firefighter Calvillo had no doubt the victim was deceased. The victim’s bed was dirty with dried feces on it. The victim was wearing only an old diaper—no clothing. Rebecca did not appear upset by the victim’s death—she was not crying or screaming.

A paramedic, Gregory Davis, also responded to Doe’s 911 call. Davis observed that the victim was covered in a dark vomit or stool, she did not have a pulse, and she was not breathing. The victim’s body was cold when Davis touched it; he noticed the victim’s jaw, neck, arms, and legs were in rigor. Davis pronounced the victim dead at 11:11 a.m. on April 12, 2007.

E. THE INVESTIGATION

Riverside Police Officer Hirdler also responded to the 911 call, because Doe indicated a person had died at the residence. When Officer Hirdler entered the home, he saw Rebecca sitting very calm and relaxed at the kitchen table. Officer Hirdler went to the victim’s bedroom and found the room to be “really cluttered.” Due to the condition of the victim’s body and the overall condition of the house, Officer Hirdler called his supervisor because “everything appeared to be unusual.” When Officer Hirdler returned

to the victim's bedroom approximately three hours later, he saw the victim's body was on the floor; it was possible the victim's body slipped off the bed onto the floor.

Riverside Police Detective Vaughan investigated the victim's death. Detective Vaughan interviewed Rebecca on April 12. Rebecca told Detective Vaughan that in September 2006 the victim suffered "some type of internal bleeding that led to blood loss." Rebecca said the blood loss was serious and could have killed the victim. She said the victim was discharged from the hospital and Rebecca was given "no specific instructions other than if something comes up, or if she shows the same type of signs or symptoms that led to her being hospitalized, to bring her in again."

Detective Vaughan interviewed Rebecca again on April 13. Rebecca said the victim had been vomiting a black substance that appeared to contain blood during the seven months between the September 2006 hospitalization and her death, and she was vomiting with greater frequency in the week before her death. Rebecca admitted striking the victim three or four times with a cord on the morning of April 12. Rebecca told Detective Vaughan "she had committed abuse . . . but she didn't cause her death." Rebecca said the violence was used to stop the victim from crying; however, the hitting would cause the victim to cry. Rebecca told Detective Vaughan she could not understand why the victim "died all of a sudden," because there were no signs of trouble prior to the victim's death.

Detective Vaughan also interviewed Timothy. Timothy saw Rebecca strike the victim with a cord two or three days before her death. Timothy had also seen Rebecca, at other times, tie the victim down with cords or shoelaces and place a sock in the

victim's mouth "to keep her quiet." Timothy admitted he slapped the victim with an open hand. Timothy further admitted the victim's head struck the bed's headboard when he was adjusting her in bed the night before her death, but he did not see any blood or feel any liquid when he touched the back of her head.

Timothy complained that on numerous occasions he would come home from work and find the victim's diaper had not been changed for a long period of time. Timothy told Detective Vaughan the victim had not seen a doctor since September 2006. Timothy believed the victim needed to see a doctor. He did not know why he did not take the victim to a doctor, but "[h]e just didn't."

Mark McCormick, a forensic pathologist for the Riverside County Sheriff's Coroner's Office, performed the victim's autopsy. The victim had a "curvilinear contusion" on the left side of her torso and abdomen that looked like two parallel lines of bruising. The injury was the sort that would be caused by an electrical cord. On the back of the victim's head there was a one- and three-quarter-inch laceration. The laceration was approximately one quarter inch deep. The injury was consistent with a person hitting their head on a wall. The coloring of the laceration indicated it occurred while the victim was still alive.

When performing the internal portion of the autopsy, Dr. McCormick found the paleness of the victim's organs to be "rather striking"; the paleness indicated "a severe blood loss." Dr. McCormick found "very little blood" inside the victim's body. The lack of blood and color of the organs indicated the victim bled to death. Vomiting blood could lead to death by blood loss. A slow gastrointestinal bleed could explain the

victim's lack of blood volume; however, Dr. McCormick believed the victim's scalp laceration was a more obvious cause of the victim's blood loss, because Dr. McCormick did not find much blood in the victim's gastrointestinal tract.

F. DEFENSE

Paul Herrmann, a pathologist, was called as a defense witness. Dr. Herrmann reviewed the police reports in this case, the victim's medical records, photographs of the victim's autopsy, and photographs of the bedroom where the victim died. Dr. Herrmann believed the black substance on the victim's body reflected she had blood in her stomach and intestines.

Dr. Herrmann believed the victim died as a result of blood loss from her gastrointestinal tract, as opposed to her head wound. Dr. Herrmann concluded the head wound was a postmortem injury, because (1) the victim slipped off her bed after death, and (2) the wound appeared dry and non-bloody. Dr. Herrmann believed there would have been blood in the wound if it occurred while the victim were alive. Dr. Herrmann also noted there was no blood in the victim's bedroom reflecting the head wound had been bleeding. Dr. Herrmann opined that the victim slowly died of a gastrointestinal bleed that occurred from September 2006 through April 2007.

Sonja Holt, an employee of the IHSS, interviewed the victim in February 2006. The victim seemed happy, and "happy with her caregiver." Holt did not have any concerns that caused her to report anything or ask for a follow-up visit.

David Ramirez, an employee with Riverside County Adult Protective Services, evaluated the victim and her living situation on September 11, 2006. The victim nodded

her head affirmatively when Ramirez asked if she was being well taken care of by her caregiver. Ramirez noticed the victim was “very thin and frail” and the home was cluttered; however, Ramirez did not report any abuse or make a follow-up appointment to check on the victim’s welfare.

DISCUSSION

A. SUBSTANTIAL EVIDENCE

1. *STANDARD OF REVIEW*

“““When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.] “[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citations.]’ [Citation.] ‘Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]’ [Citation.]” (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1322.)

2. *REBECCA: SECOND DEGREE MURDER*

Rebecca asserts the evidence supporting her conviction for second degree murder does not meet the substantial evidence standard. We disagree.

Second degree murder is the unlawful killing of a human being with express or implied malice aforethought. (*People v. Swain* (1996) 12 Cal.4th 593, 600.) Malice is express when a defendant manifests a deliberate intent to take away the life of another human being. “[M]alice is implied ‘when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that [her] conduct endangers the life of another and who acts with conscious disregard for life’ [citation].” (*People v. Blakeley* (2000) 23 Cal.4th 82, 87.)

Rebecca was the victim’s paid caregiver. Rebecca was not paid for time the victim spent in a hospital. When Herrera suggested Rebecca leave the victim at a hospital, Rebecca refused because she needed to pay a \$500 cable bill. Rebecca was with the victim when the victim was hospitalized for blood loss in September 2006. When the victim received a transfusion in the hospital, she recovered and her condition progressed from nonresponsive to stable. Rebecca admitted she was told to return the victim to the hospital if the victim again showed symptoms of blood loss. Specifically, Dr. Ambastha would have advised Rebecca to return the victim to the hospital if the victim suffered black stool, bleeding, blackish vomit, rigor, and/or weight loss.

After being released from the hospital in September 2006, until her death in April 2007, the victim periodically vomited a black substance that appeared to contain blood. The victim was also losing weight during that time period. The victim vomited with greater frequency in the week before her death. In April 2007, Rebecca and Timothy’s neighbors complained about the victim’s “continual crying and screaming out at night.”

Rebecca told Detective Vaughan the victim's September 2006 blood loss was serious and could have killed the victim. Rebecca did not take the victim to a doctor after the September 2006 hospitalization.

From the foregoing evidence the jury could reasonably conclude Rebecca understood the victim's black vomit reflected blood loss. Rebecca further understood that blood loss could lead to the victim's death. Rebecca chose to not take the victim to the hospital because Rebecca would not have been able to collect money for the time the victim was in the hospital, and Rebecca needed that money to pay her bills. Thus, Rebecca chose money over the victim's welfare, when she knew failing to provide the victim with medical care could lead to the victim's death.

Accordingly, a finding of implied malice second degree murder is supported by substantial evidence, because the record shows the natural consequences of failing to provide the victim with medical care were dangerous to the victim's life, and Rebecca deliberately chose to deny the victim access to health care when she knew her conduct was endangering the victim's life.

Rebecca asserts the evidence does not support a conviction for second degree murder because there was nothing indicating a trip to the doctor would have saved the victim's life. Rebecca points out the doctor at Kaiser concluded the victim had a condition that could not be repaired, and thus sent the victim home without fixing the source of the bleeding. We do not find Rebecca's argument to be persuasive because while the condition might not have been reversible, the evidence supports a finding that the victim would not have died if she had received a timely blood transfusion. In

particular, the record reflects (1) a blood transfusion stabilized the victim in September 2006, and (2) the doctors told Rebecca to return the victim to the hospital if she appeared to be bleeding again. The logical inference from this evidence is that the victim might have a chronic condition that could be managed with blood transfusions. In other words, the victim would not have died if she had received medical care.

Next, Rebecca asserts there is not substantial evidence of an intent to kill the victim because the evidence reflects Rebecca believed the victim to be suffering a untreatable terminal illness, as evinced by the Kaiser doctors not treating the source of the victim's bleeding and discussing a DNR order. While Rebecca highlights evidence that is favorable to her, we must look at the evidence in the light most favorable to the conviction. The record reflects (1) Rebecca knew the victim's blood loss was life threatening, and (2) Rebecca needed the victim at her house in order to collect money to pay her bills. Thus, there is evidence supporting a finding of implied malice because the natural consequences of denying the victim access to life saving medical care were dangerous to the victim's life, and the denial was deliberately performed by Rebecca, who knew her conduct was endangering the victim's life; she acted with a conscious disregard for the victim's life because she wanted to collect the maximum amount of money for taking care of the victim.

3. *REBECCA: FATAL ELDER ABUSE*

Rebecca asserts substantial evidence does not support her conviction for fatal elder abuse. (§ 368, subs. (b)(1) & (b)(3).) We disagree.

Section 368, subdivision (b)(1) provides: “Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment”

Section 368, subdivision (b)(3) further provides: “If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison”

The evidence reflects Rebecca was paid to care for the victim, due to the victim’s physical and mental state. Thus, the evidence establishes Rebecca (1) knew the victim was an elder or dependent adult, and (2) had care or custody of the victim. Further, the record shows Rebecca willfully permitted the victim’s health to be injured, or willfully caused or permitted the victim to be placed in a situation in which her person or health was endangered by denying the victim access to medical care, when (1) Rebecca knew the victim’s blood loss was life threatening, and (2) the victim had been vomiting blood for seven months before her death. The evidence reflects Rebecca’s actions, or lack thereof, proximately caused the victim’s death, because the victim died of blood loss. If Rebecca had taken the victim to a doctor, she likely could have received another life

saving blood transfusion. Accordingly, we conclude substantial evidence supports Rebecca's conviction for fatal elder abuse.

Rebecca asserts the record does not support her conviction for fatal elder abuse because the evidence shows Rebecca believed the victim suffered from an irreparable terminal condition and therefore there is no proof Rebecca willfully caused or permitted the victim to be in a situation in which her health was endangered. Rebecca is again highlighting only the evidence that is favorable to her. We do not find her argument to be persuasive because we must look at the evidence in the light most favorable to the conviction. As set forth *ante*, there is evidence Rebecca knew the victim's blood loss could be life threatening, that she knew black vomit was sign of blood loss, and she knew the victim had been producing black vomit for seven months prior to her death, yet she declined to provide the victim access to medical care. This evidence is reasonable and credible evidence from which the jury could conclude Rebecca willfully caused or permitted the victim to be in a situation in which her health was endangered.

4. *TIMOTHY: INVOLUNTARY MANSLAUGHTER*

Timothy contends the evidence supporting his conviction for involuntary manslaughter does not meet the substantial evidence standard. (§ 192, subd. (b).) We disagree.

“Involuntary manslaughter is a lesser offense of murder, distinguished by its mens rea. [Citation.] The mens rea for murder is specific intent to kill or conscious disregard for life. [Citation.] Absent these states of mind, the defendant may incur homicide culpability for involuntary manslaughter. [Citations.] Through statutory

definition and judicial development, there are three types of acts that can underlie commission of involuntary manslaughter: a misdemeanor, a lawful act, or a noninherently dangerous felony. [Citation.] [F]or all three types of predicate acts the required mens rea is criminal negligence.” (*People v. Butler* (2010) 187 Cal.App.4th 998, 1006 (*Butler*).

““[C]riminal negligence” exists when the defendant engages in conduct that is “aggravated, culpable, gross, or reckless”; i.e., conduct that is “such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or in other words, a disregard of human life or an indifference to consequences.” (*Butler, supra*, 187 Cal.App.4th at p. 1008.) Criminal negligence has also been described as existing “when a man of ordinary prudence would foresee that the act would cause a high degree of risk of death or great bodily harm.” (*Ibid.*)

While “[i]mplied malice murder requires a defendant’s conscious disregard for life, meaning that the defendant subjectively appreciated the risk involved. [Citation.] In contrast, involuntary manslaughter merely requires a showing that a reasonable person would have been aware of the risk. [Citation.] Thus, even if the defendant had a subjective, good faith belief that his or her actions posed no risk, involuntary manslaughter culpability based on criminal negligence is warranted if the defendant’s belief was objectively unreasonable. [Citations.]” (*Butler, supra*, 187 Cal.App.4th at pp. 1008-1009, fn. omitted.)

“Involuntary manslaughter, like other forms of homicide, also requires a showing that the defendant’s conduct proximately caused the victim’s death. [Citations.] When there are concurrent causes of death, the defendant is criminally responsible if his or her conduct was a substantial factor contributing to the result. [Citation.] “‘. . . When the conduct of two or more persons contributes concurrently as the proximate cause of the death, the conduct of each is a proximate cause of the death if that conduct was also a substantial factor contributing to the result. A cause is concurrent if it was operative at the time of the death and acted with another cause to produce the death.’” [Citation.]” (*Butler, supra*, 187 Cal.App.4th at p. 1009.)

“[P]roximate causation requires that the death was a reasonably foreseeable, natural and probable consequence of the defendant’s act, rather than a remote consequence that is so insignificant or theoretical that it cannot properly be regarded as a substantial factor in bringing about the death. [Citation.]” (*Butler, supra*, 187 Cal.App.4th at pp. 1009-1010.)

Timothy was one of the people designated as the victim’s caregiver with IHSS. Prior to her death, the victim had been periodically vomiting blood for seven months. The victim lost weight during that same time period. On the night before her death, the victim vomited blood, which required her to be bathed. While in the bath, the victim again vomited blood. After the bath, when Timothy was adjusting the victim’s position in bed, he banged the victim’s head against the headboard or a bookcase. Timothy said, ““Oh, shit.”” Timothy briefly checked the victim’s head.

On the back of the victim's head there was a one- and three-quarter-inch laceration. The laceration was approximately one-quarter-inch deep. The injury was consistent with a person hitting her head on a wall. The coloring of the laceration indicated it occurred while the victim was still alive. Dr. McCormick found "very little blood" inside the victim's body. The lack of blood and color of the organs indicated the victim bled to death. Dr. McCormick believed the victim's scalp laceration was the cause of the victim's blood loss, because Dr. McCormick did not find much blood in the victim's gastrointestinal tract. Timothy told Detective Vaughan the victim had not seen a doctor since September 2006. Timothy believed the victim needed to see a doctor. He did not know why he did not take the victim to a doctor, but "[h]e just didn't."

The foregoing evidence reflects criminal negligence on the part of Timothy. Timothy knew the victim had been vomiting blood, she had a blood loss issue in the past, and he inflicted a sizeable cut on her head. Given the circumstances, a reasonable person would have taken the victim to a hospital for medical attention, given that a prior blood transfusion had saved the victim's life. Timothy's infliction of the scalp laceration combined with the failure to seek medical attention came together to create a substantial factor in the victim's death, as testified to by Dr. McCormick. Accordingly, we conclude substantial evidence supports the findings of criminal negligence and proximate cause.

Timothy asserts his conviction is not supported by substantial evidence because there is nothing proving "that any act or omission by the defendants caused [the victim] to die." Timothy concludes there was no blood on the scalp wound, and therefore a

finding “that this event *caused* [the victim] to bleed to death borders on the absurd, and an absurd inference cannot constitute substantial evidence.”

We do not find Timothy’s argument to be persuasive because even if the head wound did not bleed, looking at the evidence in the light most favorable to the prosecution, that would be evidence of a major loss of blood volume in the victim’s body. If the victim’s blood volume was so low that a one- and three-quarter-inch head wound did not bleed, then a reasonable person still would have taken the victim to a hospital for a blood transfusion, especially after she twice vomited blood in the same night. In short, if the head wound did bleed, then it would have been unreasonable to not take the victim to the hospital given the circumstances, and conversely if the head wound did not bleed it also would have been unreasonable to not take the victim to the hospital given the circumstances and her medical history. Either way, as one of the victim’s designated paid caregivers, Timothy acted unreasonably in striking the victim’s head and failing to seek medical attention for the victim.

Next, Timothy asserts he cannot be convicted on the basis of failing to seek medical attention for the victim because the doctors chose not to perform corrective surgery on the victim and suggested a DNR order. Timothy’s argument is not persuasive because the record reflects the victim’s condition could be stabilized with a blood transfusion. While the victim may have suffered a chronic bleeding condition, she did not have to die from the condition, as evinced from her September 2006 hospitalization. Thus, we are not persuaded that Timothy’s failure to seek medical attention was of little consequence.

5. *TIMOTHY: FATAL ELDER ABUSE*

Timothy asserts the evidence supporting his conviction for fatal elder abuse does not meet the substantial evidence standard. (§ 368, subds. (b)(1) & (3).) We disagree.

The law for fatal elder abuse is set forth *ante*, but we repeat it here for the reader's reference. Section 368, subdivision (b)(1) provides: "Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment"

Section 368, subdivision (b)(3) further provides: "If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison"

The evidence reflects Timothy knew of the victim's age, physical condition, and mental condition, due to the fact that he was her paid caregiver and shared a home with her. Thus, there is substantial evidence Timothy knew the victim was an elder or dependent adult. Further, after the victim twice vomited blood in a single night, Timothy inflicted a head wound upon the victim. Timothy was aware of the victim's

prior hospitalization for blood loss. Timothy knew the victim needed to see a doctor, but he did not take her for medical attention.

The foregoing evidence supports a conclusion that Timothy willfully caused or permitted the victim's health to be injured, or willfully caused or permitted the victim to be placed in a situation in which her person or health was endangered, because he inflicted a sizeable head wound on a person with blood loss issues, who had twice vomited blood that same night, and then failed to seek medical care for the victim. Additionally, the victim bled to death, which is substantial evidence that Timothy's act of failing to seek medical care for the victim proximately caused the victim's death.

Timothy contends substantial evidence does not support his fatal elder abuse conviction because he "did not *cause* [the victim's] death in any actionable way." Timothy actively chose not to seek medical care for an elder whom he was paid to provide care to. Caregivers have a legal duty to not permit elders in their care to be placed in a situation in which the elder's person or health is endangered. (§ 368, subd. (b)(1).) The victim in this case was not a stranger to Timothy. We are not discussing a "good Samaritan" who is accused of failing to act. Timothy was paid to care for the victim, and he failed in his legal duty. Thus, Timothy's strike to the victim's head and failure to obtain medical care are actionable because Timothy had a duty to protect the victim's wellbeing.

B. TIMOTHY: VAGUE LAWS

1. *CONTENTION*

Timothy asserts “the judgment in this case cannot be affirmed” because of the legal prohibition against vague laws. Timothy asserts a caregiver in a similar position would not have foreseen that he could face criminal prosecution for a death “that was just a matter of time in coming.” Timothy contends, “No ordinary person could foresee that laws that prohibit killing someone, or laws that prohibit inflicting great injury or death on an elderly person, might be brought to bear on an untrained, lay caretaker whom the state has hired to care for a dying, disabled, retarded person, only because [his] manner of care might later be found less than perfect.” We disagree.

2. *LAW*

“The due process clauses of both the United States Constitution and the California Constitution require “a reasonable degree of certainty in legislation, especially in the criminal law” [Citation.]’ [Citation.] Due process imposes two requirements on a criminal statute to avoid infirmity for vagueness. ‘First, the provision must be definite enough to provide a standard of conduct for those whose activities are proscribed. [Citations.] Because we assume that individuals are free to choose between lawful and unlawful conduct, “we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [or she] may act accordingly. Vague laws trap the innocent by not providing fair warning.” [Citations.] [¶] Second, the statute must provide definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement. [Citations.] When the

Legislature fails to provide such guidelines, the mere existence of a criminal statute may permit ““a standardless sweep”” that allows police officers, prosecutors and juries ““to pursue their personal predilections.”” [Citations.]’ [Citation.]” (*People v. Vincelli* (2005) 132 Cal.App.4th 646, 650-651.)

“In determining whether a statute is sufficiently clear to give fair notice of the conduct it proscribes, ‘we consider the language of the statute, its legislative history and California decisions construing the statutory language. [Citation.]’ [Citation.] ‘This analytical framework is consistent with the notion that we “require citizens to apprise themselves not only of statutory language, but also of legislative history, subsequent judicial construction, and underlying legislative purposes.” [Citation.]’ [Citation.]” (*People v. Vincelli, supra*, 132 Cal.App.4th at p. 651.)

3. *INVOLUNTARY MANSLAUGHTER*

Section 192, subdivision (b), which concerns involuntary manslaughter provides: “Manslaughter is the unlawful killing of a human being without malice. It is of three kinds: [¶] . . . [¶] (b) Involuntary—in the commission of an unlawful act, not amounting to [a] felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.”

The plain language of the statute reflects that if a victim dies while a defendant is committing an unlawful act then the defendant may be guilty of involuntary manslaughter. In this case, Timothy was in the position of a designated and paid caregiver for the victim. As such, he had a duty not to permit the victim to be placed in

a situation in which the victim's person or health was endangered. (§ 368, subd. (b).) In not complying with that duty, by striking the victim's head and failing to seek medical attention, Timothy was committing an unlawful act. When the victim died during the commission of that unlawful act, Timothy committed involuntary manslaughter. Thus, based upon the plain language of the statute, Timothy's actions fall within the offense of involuntary manslaughter. In other words, we conclude the statute is not vague.

4. *ELDER ABUSE*

Once again we provide the language of the fatal elder abuse laws for the reader's reference. Section 368, subdivision (b)(1) provides: "Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment"

Section 368, subdivision (b)(3) further provides: "If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison"

The plain language of section 368 sets forth a duty for a caregiver to not permit an elder's health to be injured and to not permit an elder to be placed in a situation in which the elder's health is endangered. In this case, Timothy did not seek medical attention for an elder who (1) had a history of life-threatening blood loss, (2) had been vomiting blood for months, (3) twice vomited blood in a single night, and (4) received a one- and three-quarter-inch cut to her scalp. The plain language of the statute prohibits the failure to provide needed care to an elder whose health is in danger. The evidence reflects Timothy knew the victim needed medical care but he did not help her to seek such care. Therefore, Timothy's conduct falls within the plain language of the statute, because he permitted the victim to be placed in a situation where her health was in danger, and which eventually led to her death by failing to take proper care of her. In sum, we conclude the elder abuse statute is not vague.³

C. REBECCA: ALLRED EVIDENCE

1. *PROCEDURAL HISTORY*

During trial, prior to Allred being sworn as a witness, the prosecutor informed the trial court “[t]here was an open APS, Adult Protective Service, investigation regarding whether Mr. Allred was taking the social security moneys of the victim in this case.” The prosecutor conceded the evidence could be relevant to Allred's credibility, and therefore “it's probably appropriate to allow counsel to ask if he was or was not

³ Timothy's argument on appeal does not delve into legislative history or prior case law; rather, it focuses on the plain language of the statute. Accordingly, our analysis has also focused solely on the plain language of the statute.

doing it.” Rebecca’s trial counsel also argued the evidence was relevant to show (1) Allred’s moral turpitude, and (2) Rebecca and Timothy were not defrauding the relevant government agencies. Timothy’s attorney also agreed the evidence was relevant to show Allred’s moral turpitude.

The trial court said, “I think everybody agrees to that, that it’s a moral turpitude issue. I don’t think that’s what’s at issue here. What’s at issue is whether or not he can be questioned about the investigation. [¶] Is it still a pending investigation, or has it been closed?” The prosecutor responded that there appeared to be no follow-up in the investigation after the victim’s death. The trial court commented that Allred could be entitled to counsel if it were possible he could face charges for fraudulently taking the victim’s money. The trial court concluded that if the investigation were closed then Allred could be asked, “[I]s it true that you were taking the money that was meant for your sister and using it for yourself[?]” If Allred responded “yes” then that would end the questioning on the topic. If Allred responded “no” then another witness could be called to testify about conducting the investigation and finding fraud. However, the trial court did not believe Allred could be questioned about the status of the investigation, because such testimony would be hearsay.

The prosecutor asserted it would be “very complicated territory” to permit evidence about “the existence of [an] investigation, and have the investigators come in and talk about the investigation.” The prosecutor conceded witnesses could talk about the fraud, but argued evidence about the existence of an investigation would be irrelevant. The trial court again said Allred could be asked if he committed fraud, and if

he denied it then a person who did the investigation could testify that she or he discovered fraud. The trial court contacted the conflicts defense panel to find an attorney to advise Allred prior to Allred's testifying.

The trial court also raised the issue of Allred's "fairly extensive record." The prosecutor conceded that all of Allred's prior offenses would be admissible evidence. After speaking with an attorney from the conflicts defense panel, Allred agreed to testify. On direct examination, Allred explained that one of the reasons he did not act as the victim's caregiver was because he is a convicted sexual offender and therefore did not think it would be appropriate for him to bathe her. During cross-examination by Rebecca's attorney Allred admitted having prior criminal cases involving (1) stolen property in 1972, (2) grand theft in 1976, (3) burglary in 1980, (4) child molestation in 1988, (5) being a felon in possession of a firearm in 1998, (6) failing to register as a sexual offender in 1998; and (7) cultivation of marijuana in 2006.

Allred admitted the victim's Social Security checks were sent to him. Allred cashed the checks. Allred kept some of the money himself, gave some to Rebecca, some to Timothy, and some to the victim. After the victim died, Allred returned the remainder of the money to Social Security.

During cross-examination by Timothy's attorney, Allred explained he was arrested for failing to register as a sexual offender, but not convicted. Allred said he had violated parole on one occasion, and had been sent to prison three times.

Later in the proceedings, Rebecca's trial counsel sought to call a Kaiser employee to testify that Rebecca informed Kaiser that Allred was financially abusing

the victim. Counsel argued the evidence was relevant to show Rebecca was not trying to defraud any of the relevant government agencies for financial gain, because there was an issue as to whether the victim was living at Allred's home or Rebecca's home, and how the money should be distributed based upon the victim's residence. There was an insinuation that Rebecca may have conspired with Allred to commit fraud by making it appear the victim was living in Allred's home as opposed to Rebecca's home. The Kaiser employee's testimony was meant to contradict that insinuation by indicating Rebecca reported the possible fraud to Kaiser.

The trial court explained, "Allred denied any of that. And I don't know how you're going to be able to get the fact that there was some investigation in to see whether or not he was taking the money." Rebecca's counsel noted Allred admitted cashing the victim's checks. The trial court responded, "He denied any fraud, is what I'm getting at." Rebecca's counsel stated, "And [the] people who investigated disagreed, so I think it's relevant." The trial court concluded the "investigation would be so collateral to what we're talking about here." The court explained, "[A]ll you're seeking to do is to show that Mr. Allred took money that was designated for his sister." The trial court also expressed concern that the proposed testimony would be based on hearsay.

Further, the trial court stated, "Mr. Allred admitted to umpteen number of felony convictions, including a sex-related conviction, including lack of registration. I mean, if you wanted to impugn his credibility by way of his moral turpitude, I think that was amply done by all that. So I wouldn't allow anything as far as the investigation is

concerned as it relates specifically to Mr. Allred.” The trial court concluded a Kaiser employee or APS worker could testify about the victim’s living arrangements and living conditions, but not about possible financial abuse by Allred.

A Kaiser social worker, Cassandra Quiroz, testified on behalf of Rebecca’s defense that she spoke to Rebecca on September 2, 2006. Rebecca told Quiroz the victim lived at Rebecca’s house 24 hours per day, seven days per week. Quiroz contacted APS, and informed APS the victim was living in Rebecca’s residence.

Rebecca also called Ramirez, an APS employee, as a witness. During direct examination, Ramirez stated that he cross-reported to the Riverside Police Department about his visit with the victim. Rebecca’s counsel asked if the cross-report concerned Allred. The prosecutor objected. The court sustained the objection. Rebecca’s counsel asked if Kaiser social workers contacted APS to initiate the investigation, and Ramirez said they did. Counsel asked if Kaiser or APS had generated a report related to the investigation. The prosecutor objected. The trial court instructed Rebecca’s counsel to “move to the next area.”

2. ANALYSIS

Rebecca contends the trial court erred by preventing her from impeaching Allred’s credibility by stopping her from cross-examining Allred “about the financial abuse and fraud concerns of the [APS] program.” Rebecca asserts the censored evidence gave the jury a “false sense of Allred’s credibility and his involvement” in caring for the victim in violation of Rebecca’s Sixth and Fourteenth Amendment rights. We disagree.

“““[T]he right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country’s constitutional goal. Indeed, . . . to deprive an accused of the right to cross-examine the witnesses against [her] is a denial of the Fourteenth Amendment’s guarantee of due process of law.” [Citation.]’ [Citation.] ‘The constitutional right of confrontation includes the right to cross-examine adverse witnesses on matters reflecting on their credibility.’ [Citation.] ‘As the high court has explained, cross-examination is required in order “to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.” [Citation.]’ [Citation.]” (*People v. Ardoin* (2011) 196 Cal.App.4th 102, 118 (*Ardoin*).

“““[But i]n the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” [Citation.]’ [Citation.] ‘[N]ot every restriction on a defendant’s cross-examination rises to a constitutional violation.’ [Citation.] The ‘right of confrontation is not absolute, however [citations], “and may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.” [Citation.]’ [Citations.]” (*Ardoin, supra*, 196 Cal.App.4th at pp. 118-119.)

“““[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.” [Citations.]

Exclusion of impeaching evidence on collateral matters which has only slight probative value on the issue of veracity does not infringe on the defendant's right of confrontation.' [Citations] Ordinarily, proper application of the statutory rules of evidence does not impermissibly infringe upon a defendant's due process rights. [Citations.]" (*Ardoin, supra*, 196 Cal.App.4th at p. 119.)

“In other words, a trial court may restrict cross-examination on the basis of the well-established principles of Evidence Code section 352, i.e., probative value versus undue prejudice. [Citation.] There is no Sixth Amendment violation at all unless the prohibited cross-examination might reasonably have produced a significantly different impression of credibility.’ [Citations.]” (*Ardoin, supra*, 196 Cal.App.4th at p. 119.)

First, the trial court permitted defense counsel to directly ask Allred, “[I]s it true that you were taking the money that was meant for your sister and using it for yourself[?]” If Allred responded “yes” then that would end the questioning on the topic. If Allred responded “no” then another witness could be called to testify about conducting the investigation and finding fraud.

Instead of following the trial court's suggested question, counsel asked Allred (1) if the victim's Social Security checks were sent to him, (2) if he cashed the victim's checks, (3) whether he kept some of the money himself, and (4) what happened to the remainder of the money after the victim's death. Allred admitted keeping some of the money from the victim's check, but claimed to have dispersed part of the money to Rebecca, Timothy, and the victim. Trial counsel failed to examine what portion of the money Allred retained, and whether he spent the money on himself or the victim. In

sum, the trial court gave counsel the opportunity to impeach Allred's credibility with testimony about potential financial abuse, but counsel did not take full advantage of the opportunity.

Second, we examine the prejudice issue. Allred testified that he was not a primary caregiver for the victim because he was a convicted sexual offender and did not feel it would be appropriate for him to bathe her. Allred also stated he did not act as the victim's primary caregiver because he is often out of town due to his job as a beekeeper. Allred explained there are times during the year, such as January through April, that he was rarely in the Riverside area. Allred gave the example of going to the Fresno area for a two-week period, returning home for a few days, and then going back to Fresno. Allred said he also travelled to South Dakota for periods of time. Allred admitted he stopped attending the victim's doctor appointments in 2004. Allred further testified that he has been convicted of multiple felonies, including child molestation, and had been in prison three times.

Given Allred's testimony about suffering various felony convictions and rarely being available for the victim for periods of time, it is unlikely evidence about financial issues would have given the jury a vastly different impression of Allred. Allred did not present himself as terribly involved in the victim's care or free from moral turpitude. Thus, to the extent the trial court should have permitted further cross-examination, we conclude beyond a reasonable doubt no prejudice was suffered because the additional cross-examination would not have produced a significantly different impression of Allred's credibility.

Rebecca asserts it was improper for the court to not allow her to contradict the evidence that Allred returned the victim's Social Security money after her death due to a criminal investigation, as opposed to altruism, because the jury needed to see Allred was not an honest person. Rebecca then points to a variety of evidence showing Allred was dishonest to support her position that there would be evidence Allred was "morally lax"; for example, Rebecca points to various items of evidence indicating Allred committed fraud with IHSS, and that he did not contact the hospital about the victim's condition.

We do not find Rebecca's argument to be persuasive because it appears to be internally contradictory. It appears Rebecca is asserting the trial court erred by not permitting her to present evidence of Allred's moral turpitude, and she is supporting that argument with citations to evidence admitted at trial related to Allred's lack of morality. In other words, evidence of Allred's moral turpitude was presented at trial, but Rebecca is complaining the trial court erred by not permitting her to provide evidence about Allred's moral turpitude.

To the extent Rebecca is arguing only that the trial court should have permitted her to add to the evidence already discrediting Allred, we find that argument unpersuasive as well. Compounding the credibility evidence against Allred would have made little appreciable difference given the damaging evidence that the trial court admitted about Allred's criminal past. In other words, additional cross-examination would not have produced a significantly different impression of Allred's credibility

given the evidence that he was a convicted sex offender with a variety of other crimes on his record, and multiple incarcerations.

D. REBECCA: TERMINAL ILLNESS

1. *PROCEDURAL HISTORY*

Allred testified that Rebecca told him the victim was suffering from a terminal illness. Additionally, Allred stated Rebecca's mother told him the victim was suffering from a terminal illness. Rebecca's mother, Charlene Stark, testified at trial. Stark stated Rebecca told her the victim was suffering from a terminal illness. Rebecca made the statement around the time Stark noticed the victim was losing weight. During cross-examination of Stark, the prosecutor asked, "So Rebecca did tell you that [the victim] had a terminal illness, including internal bleeding?" Stark responded, "Yeah. She said that there was internal bleeding, and that they didn't know why at Kaiser. And that's about all I knew really."

During Rebecca's trial counsel's redirect examination of Stark the following exchange occurred:

"[Rebecca's counsel]: Did Rebecca express frustration about the bleeding that [the victim] was having?"

"[Stark]: Yeah.

"[Prosecutor]: Objection. Hearsay.

"The Court: Sustained.

"[Rebecca's counsel]: Evidence Code 356 as to the previous answer in the prosecution's cross-examination.

“The Court: Well, going to have to hear more than just that. You can approach sidebar if you would like.”

A sidebar discussion was held off the record. After the unreported conversation, the following dialogue took place:

“[Rebecca’s counsel]: Ms. Stark, when Rebecca was talking to you about the terminal illness of [the victim], how did she explain that?”

“[Prosecutor]: Objection. Hearsay.

“The Court: Sustained.

“[Rebecca’s counsel]: When you were discussing just a moment ago that the terminal illness was bleeding and that Kaiser did not know why—

“[Stark]: Uh-huh.

“[Rebecca’s counsel]: —did Rebecca explain that?”

“[Stark]: Not really.

“[Rebecca’s counsel]: Did she explain that they didn’t find the source of the bleeding?”

“[Prosecutor]: Objection. Hearsay.

“[Stark]: Yeah.

“The Court: As to that answer, sustained.

“[Prosecutor]: Move to strike.

“The Court: Answer is stricken. The juries are admonished to disregard.

“[Rebecca’s counsel]: I have no other questions. Thank you.”

After the jurors left the courtroom, the trial court summarized the off-the-record sidebar discussion. The trial court explained, “I didn’t know the exact extent of the conversation, but nonetheless it appeared as though [Evidence Code section] 356 was inapplicable because it did not actually explain or clarify or narrate that which was otherwise elicited, and it wasn’t actually elicited by [the prosecutor]; it was volunteered by this witness.” The trial court went on to say, “In any event, the Court allowed [Rebecca’s trial counsel] to rephrase, which I think she did for one question. The second question was objected to, and that was the end of the inquiry.”

The trial court permitted Rebecca’s trial counsel to make supplemental comments about the sidebar discussion. Rebecca’s counsel said, “[M]y [Evidence Code section] 356 request was to expand upon the conversation between my client and her mother about the care, or the physical medical condition of [the victim]. And since it’s not in writing anywhere, I wouldn’t have known what else was in the conversation, so I was simply trying to inquire as to the depth or breadth of the conversation.” The trial court responded, “All right. Well, as I indicated, I think it was hearsay. And without exception, it did not fit within [section] 356 of the Evidence Code, so that was the ruling of the Court.”

2. ANALYSIS

Rebecca contends the trial court erred by refusing “to permit a full representation of what Rebecca said when she discussed [the victim’s] physical condition and her treatment at Kaiser” because the ruling “allowed a distortion of Rebecca’s statements about [the victim’s] condition to be presented to the jury.” We disagree.

Evidence Code section 356 provides: “Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence.”

““The purpose of this section is to prevent the use of selected aspects of a conversation, act, declaration, or writing, so as to create a misleading impression on the subjects addressed. [Citation.]”” (*People v. Williams* (2006) 40 Cal.4th 287, 319.) We review the trial court’s ruling for an abuse of discretion. (*Ibid.*)

When Rebecca’s trial counsel supplemented the trial court’s summary of the sidebar conversation, she said, “I wouldn’t have known what else was in the conversation, so I was simply trying to inquire as to the depth or breadth of the conversation.” Given that counsel was unclear on the subjects discussed in the conversation, Evidence Code section 356 cannot be applicable because there is no way to know whether a misleading impression was created. In other words, the trial court was within reason by concluding Evidence Code section 356 was inapplicable, because there is no way to know whether the testimony created a distorted view of the conversation.

Rebecca asserts the trial court’s decision was an abuse of discretion because “[h]ow Rebecca responded to the Kaiser diagnosis and lack of treatment cannot in any reasonable way be said not to provide context to her statement as required under

Evidence Code section 356.” Assuming Rebecca is correct and the trial court erred, we should apply the *People v. Watson* (1956) 46 Cal.2d 818, 836, harmless error standard, which provides “there should be no reversal where ‘it appears that a different verdict would not otherwise have been probable.’” (*People v. Cunningham* (2001) 25 Cal.4th 926, 999.) However, Rebecca asserts the constitutional harmless error standard of *Chapman v. California* (1967) 386 U.S. 18 should apply. Under either standard, the error is harmless.

Detective Vaughan testified that Rebecca “had a dispute with the doctor about [the victim] being released while she was still bleeding.” Detective Vaughan testified Rebecca complained Dr. Ambastha “was mean to her.” Rebecca had asked Dr. Ambastha to conduct a scoping test on the victim, but Dr. Ambastha refused because he believed the procedure would be too dangerous. Rebecca became “upset” with Dr. Ambastha because she wanted further tests conducted on the victim, but Dr. Ambastha “got mad and walked out on her.” Thus, there was evidence in the record reflecting Rebecca was frustrated by Kaiser’s diagnosis and lack of treatment. As a result, we conclude beyond a reasonable doubt a different verdict would not have been reached if the trial court ruled differently on Rebecca’s Evidence Code section 356 motion, because the jury was informed how Rebecca felt about Kaiser’s treatment of the victim.

Rebecca asserts the trial court’s ruling was prejudicial because “Rebecca’s understanding and frustration about that lack of treatment clearly added important context to her description of [the victim] as terminal; and gave it an entirely different context that did not support a guilty or reckless state of mind.” We do not find

Rebecca's prejudice argument to be persuasive, because the jury was informed that Rebecca was upset by Kaiser's treatment of the victim and that she wanted further medical tests to be conducted. Nevertheless, the jury found Rebecca guilty of murder. Thus, we can conclude beyond a reasonable doubt that providing cumulative evidence of Rebecca expressing her frustration with Kaiser to Stark would not have resulted in a different verdict.

E. TIMOTHY: CUSTODY CREDITS

1. *PROCEDURAL HISTORY*

Timothy was arrested on April 12, 2007. Timothy's sentencing hearing took place on March 28, 2011. The court calculated Timothy's actual credit as 1,447 days with 722 days of conduct credit (§ 4019).

2. *ANALYSIS*

Timothy contends the trial court erred in calculating his conduct credits because during the period between January 25 and September 28, 2010, a different version of section 4019 was in effect, which set forth that conduct credits should be awarded on a one-for-one basis, as opposed to a two-for-one basis (the old version of the statute). Timothy was given 123 days for that time period, when he should have been given 247 days. Thus, Timothy asserts his credits must be adjusted to award him an additional 124 days of credit. We disagree.

"Before January 25, 2010, under section 4019, defendants were entitled to one-for-two conduct credits, which is two days for every four days of actual time served in presentence custody. (Former § 4019, subd. (f), as amended by Stats. 1982, ch. 1234,

§ 7, pp. 4553, 4554.) Effective January 25, 2010, the Legislature amended section 4019 to accelerate the accrual of presentence conduct credit such that certain defendants earned one-for-one conduct credits, which is two days of conduct credit for every two days in custody. (Stats. 2009, 3d Ex. Sess. 2009–2010, ch. 28, § 50.) The Legislature increased the accrual rate to reduce expenditures in response to Governor Arnold Schwarzenegger’s declaration of a fiscal emergency. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d Reading analysis of Sen. Bill No. 3X 18 (3rd Ex. Sess. 2009–2010) Jan. 12, 2009; *People v. Garcia* (2012) 209 Cal.App.4th 530, 535, 147 Cal.Rptr.3d 221.) [¶] Effective September 28, 2010, the Legislature again amended section 4019. (Stats. 2010, ch. 426, §§ 1, 2, 5.) Subdivisions (b) and (g) restored the less generous one-for-two presentence conduct credit calculation that had been in effect prior to the January 25, 2010, amendment.” (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.)

The People assert Timothy’s “credits must be calculated pursuant to the law in effect at the time he committed the offense.” The People do not provide a legal citation to support this position. In *People v. Brown* (2012) 54 Cal.4th 314, our Supreme Court seemingly approved the conclusion that a prisoner would earn conduct credits at two different rates, and therefore the date of a defendant’s offense is not dispositive for purposes of applying a particular version of section 4019. (*Id.* at p. 322; see also *People v. Rajanayagam, supra*, 211 Cal.App.4th at p. 52, fn. 4.) Thus, it would appear the one-for-one conduct credit rate should apply for the time Timothy was incarcerated from January 25, 2010, through September 27, 2010.

In a second argument, the People assert Timothy was not eligible for the one-for-one conduct credits during the January to September 2010 period because his offenses were serious felonies. Under the January 25, 2010, version of section 4019 a prisoner “committed for a serious felony, as defined in Section 1192.7” was not eligible for the special one-for-one credit accrual. (Former § 4019, subd. (c)(2).)

In 2010, a serious felony was defined, in part, as “any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice.” (Former § 1192.7, subd. (c)(8).) We apply the substantial evidence standard of review in determining whether Timothy was committed for an offense that involved the personal infliction of great bodily injury. (*People v. Bueno* (2006) 143 Cal.App.4th 1503, 1507-1508.)

Timothy was convicted of abuse of an elder or dependent adult (§ 368, subd. (b)(1)), with the enhancement that the abuse proximately caused the victim’s death (§ 368, subd. (b)(3)). As discussed *ante*, Timothy’s abuse conviction is supported by evidence that, on the night before the victim’s death, he banged the victim’s head, causing a one- and three-quarter-inch laceration. A forensic pathologist determined the scalp laceration was the cause of the victim bleeding to death. Given the evidence that Timothy inflicted the blow that led to the victim’s death, we conclude substantial evidence supports a conclusion that Timothy’s elder abuse conviction qualifies as a serious felony.

Timothy asserts the conviction does not qualify for the personal infliction of great bodily injury exception to the one-for-one conduct credit formula because

(1) there is no evidence of Timothy personally inflicting great bodily injury on the victim, and (2) the jury did not make a finding concerning great bodily injury, so any sentence based on such a finding would violate *Apprendi v. New Jersey* (2000) 530 U.S. 466, which prohibits a court from increasing a defendant's sentence on the basis of a fact, other than a prior conviction, that has not been submitted to a jury.

We do not find Timothy's argument to be persuasive because there is evidence he banged the victim's head, causing the injury that led to her death. Thus, there is evidence Timothy personally inflicted great bodily injury on the victim. Second, the great bodily injury finding contention is not persuasive because the jury found Timothy's abuse proximately caused the victim's death. If the abuse led to death, it is logically inferred that Timothy inflicted great bodily injury. Third, the *Apprendi* argument is not persuasive because *Apprendi* concerns prison terms, not presentence conduct credits. In other words, it is not clear *Apprendi* would apply to a situation involving the calculation of conduct credits.

F. JOINDER

Rebecca and Timothy join in one another's arguments on appeal. However, neither party offers a different perspective on the arguments or makes the other party's argument somehow unique to his or her own situation. Since we have rejected both defendants' individual arguments on appeal, we are not persuaded by their joining in one another's contentions.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.