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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re U.C., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

U.C.,

Defendant and Appellant.

G049488

(Super. Ct. No. DL044716)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Cheryl L. Leininger, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Kelly Johnson and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \*

U.C. contends there is no substantial evidence to support the finding that when he kicked his two-year-old son, he committed an act of child abuse “under circumstances or conditions likely to produce great bodily harm or death.” (Pen. Code, § 273a.) He also argues the probation condition that he not associate with certain persons should be stricken because it is vague and overbroad, and therefore unconstitutional. We disagree and affirm.

## I FACTS

On April 19, 2013, 17-year-old U.C. got into a fight with D.A., the mother of his two children. U.C., who was five feet six inches tall and weighed about 160 to 170 pounds, purportedly kicked his two-year-old son. After D.A. picked up the crying child, U.C. pushed her in the chest, at least twice. After she put the child back down, U.C. beat her up, in the presence of the child. D.A. called the police.

The People filed a Welfare and Institutions Code section 602 petition to have U.C. declared a minor ward of the juvenile court. That petition alleged, inter alia, that U.C., “under circumstances and conditions likely to produce great bodily harm and death, did willfully and unlawfully injure CHILD DOE,” (Pen. Code, § 273a, subd. (a)), and that he “did willfully and unlawfully inflict corporal injury resulting in a traumatic condition upon [D.A.], who was the mother of [his] child” (Pen. Code, § 273.5, subd. (a)). The court found the allegations as to those counts true beyond a reasonable doubt.

The court ordered U.C. declared a ward of the juvenile court and placed him on probation. (Welf. & Inst. Code, § 602.) It further ordered U.C. “not to associate with anyone who you know is disapproved by the court, your parent/guardian, or probation officer, or anyone who you know is on probation or parole, or a criminal street or tagging crew or using/selling/possessing, or under the influence of alcohol or

controlled substances including marijuana . . . .” (Capitalization omitted.) U.C. filed a notice of appeal.

## II

### DISCUSSION

#### A. *Felony Child Endangerment:*

##### (1) *Penal Code section 273a—*

Penal Code section 273a, subdivision (a) provides: “Any person who, *under circumstances or conditions likely to produce great bodily harm or death*, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.” (Pen. Code, § 273a, subd. (a), italics added.)

It is for the trier of fact to “determine whether the infliction of the unjustifiable physical pain or mental suffering on a child was under circumstances or conditions likely to produce great bodily harm or death.” (*People v. Sargent* (1999) 19 Cal.4th 1206, 1224.) ““On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) ““““Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the [finder of fact].”” [Citation.]” (*People v. Clark* (2011) 201 Cal.App.4th 235, 242.) In this case, it does not so appear.

(2) *Evidence—*

(a) *D.A.'s testimony*

On the date of the incident, D.A. was living with U.C., the father of her two children. She asked him to bring some diapers when he came home from work. When he came home, he brought a friend, but no diapers. D.A. called U.C.'s mother, and U.C. got mad and started getting aggressive. He started screaming at D.A. and told her she was stupid.

U.C. started getting ready to go out with his friend and was about to put on some cologne, but his two-year-old son wanted to play. The little boy grabbed the cologne and ran away. U.C., who was already upset, got angry. He said to the boy, "get your ass over here." Then, U.C., who was wearing shoes, went after the little boy and kicked him on his left thigh.

The child "dropped to the floor," started crying and complained of pain. D.A. said to U.C., "I told you millions of time[s] you can hit me but don't mess with my children." Then the two of them started arguing.

D.A. picked up the little boy and U.C. "started screaming at [her] more." While D.A. held the little boy in her arms, U.C. pushed her in the chest. She started to walk away, to get her little girl, and U.C. started "screaming more." He blocked her exit from the room and pushed her again, while she was still holding the little boy. D.A., who thought U.C. was on drugs, was afraid something else was going to happen, so she put the child down and told him to go to another room.

U.C., who was really angry, pushed D.A. onto the ground. Using both fists, he hit her over and over again on her arms and she started crying. The little boy was still in the room.

D.A. grabbed U.C.'s shirt and accidentally got a hold of his necklace, which broke. He said, "You fucked up, bitch. You're done." D.A. said she did not mean

to do it. But U.C. was really mad and, with his shoes on, kicked her many times, in the stomach, leg and arms. The two-year-old boy, who was still in the room, was screaming.

When D.A. stood up, U.C. pulled her by the hair and hit her “over and over again” in the face. Then, U.C.’s friend, who was on probation and did not want to get in trouble, called out, “let’s go.” After they left, D.A. called the police.

The police arrived about 20 minutes later. Although they saw the little boy, they did not check him for injuries. The officers wanted to look at the boy, but he was very upset and started crying every time they went near him. They did not want him to cry more, so they left him alone. D.A. said when the police photographers came later, they did not take any photographs of the little boy because they did not see him.

When D.A. was being asked about whether the boy has “cried when he’s in pain,” D.A. said: “Okay, . . . he was scared. It wasn’t much of the pain he had, he was just scared. He was scared. There was no bruises. It was red. They saw that it was red, but it wasn’t a bruise.”

When asked if the boy complained to her about pain the day afterwards, she said: “He was crying a lot. He can’t tell me if he has pain or not, but he had never cried like that before.” She also testified that ever since that day, he had cried a lot and had nightmares, and was not eating or playing. At the time she testified, in November 2013, she said the boy was getting therapy.

*(b) Officer Quijas’s testimony*

Police Officer Nicole Quijas responded to the scene. D.A. was shaking and appeared afraid when she opened the door. She was holding a baby girl and the two-year-old boy was clinging to her leg. When Officer Quijas asked what happened, D.A. became upset, and started to cry and shake, so much so that she had to sit down in order to be able to talk.

Officer Quijas observed injuries on D.A.'s face and arm. She said she examined the two year old for injuries, but at the time of trial, she did not remember if she saw any. She also could not remember the demeanor of the little boy, such as whether he was crying. However, she said she would have documented an injury if she had seen one. When asked whether she noticed "any redness to his right leg, for example," she replied that she did not.

Officer Quijas was asked whether, when she returned about six hours later with the CSI photographer, she directed that any photographs be taken of the little boy, and she answered, "No." She was also asked whether that was because she had not noticed any injuries on him, and she replied, "Correct." At the same time, Officer Quijas testified that when she and the CSI photographer returned, they actually met D.A. at a spot "away from her home," "because [D.A.] was planning on leaving for the night and she was afraid for her safety." Officer Quijas did not "remember the child being there."

*(c) U.C.'s Testimony*

U.C. and D.A. got into an argument after he got home from work. At one point, U.C. had put on some cologne, and left the bottle on the bed. His son grabbed the bottle and ran to D.A.'s parents' room. U.C. grabbed the bottle back from him and the little boy started crying, but he did not fall. U.C. denied kicking his son.

U.C. said he was getting ready to go out, and D.A. was mad, and was screaming at him, and "smacked" him on the face. He said she hit him "like five more times," but he did not hit her back. However, he did hold her hard by the arms. He denied ever punching or kicking D.A. U.C. also said D.A. broke his necklace, and then said, "I'm sorry. I didn't mean to do that." Then, with one hand, U.C. pushed her face. She did not fall. Rather, she just kept trying to hit U.C. It was after U.C. pushed D.A. that his friend entered the room, and got in between the two of them. Then D.A. started

crying and said U.C. was cheating on her. The friend left the house, because he was on probation.

(3) *Analysis*—

The court found: “This was a violent incident that occurred in front of the child. The domestic violence that occurred in front of the child, that obviously caused emotional distress for the child, and . . . there was some pushing and shoving while the mother was holding the child, even apart from the actual kicking of the child . . . .” D.A.’s testimony that U.C. kicked the little boy, pushed her while she was holding the child, and beat her while the child was present and screaming, provide substantial evidence in support of this finding. Moreover, we note the statute, by its terms, applies to the infliction of “unjustifiable physical pain *or mental suffering*.” (Pen. Code, § 273a, subd. (a), italics added.)

U.C. says that there was no testimony that he kicked his son particularly hard or that the boy was in a dangerous location when he was kicked. He was not near a stairway or any dangerous object, for example. While D.A. testified that the boy’s leg was red, she also said it was not bruised. Moreover, she said it was not so much that the boy was in pain, as that he was scared. Indeed, Officer Quijas did not remember seeing any injuries to the boy and did not even remember his demeanor. In short, U.C. argues there was no substantial evidence to support the finding that he committed child abuse “under circumstances or conditions likely to produce great bodily harm or death,” within the meaning of Penal Code section 273a, subdivision (a). We disagree.

“Felony child abuse does not require force likely to produce great bodily injury. It requires the willful infliction of injury *under circumstances and conditions likely to produce great bodily injury*. While force may be one circumstance or condition, it is not the only circumstance or condition that may support a conviction for felony child abuse.” (*People v. Clark, supra*, 201 Cal.App.4th at p. 243, fn. omitted.) Both the age of

the child, and “the characteristics of the [child] and the defendant,” including the size differential between the two, are circumstances or conditions for consideration. (*Id.* at pp. 243, 245.)

Furthermore, “[t]here is no requirement that the actual result be great bodily injury.” [Citation.]” (*People v. Sargent, supra*, 19 Cal.4th at p. 1216.) Indeed, a defendant may be found to have committed felony child abuse under Penal Code section 273a even where the child does not complain of any pain or require any treatment after the incident, and there is no evidence of any bruising or swelling. (*People v. Clark, supra*, 201 Cal.App.4th at p. 243.) “The fact that the injuries sustained did not rise to the level of great bodily injury does not mean that there was not a substantial danger or well-founded risk of great bodily injury.” (*Id.* at p. 246.)

Here, the court found D.A. to be a credible witness. Her testimony provides substantial evidence that U.C., a five-foot-six-inch 160- to 170-pound young man, who was angry and wearing shoes, kicked a two year old. The fact that the child did not in fact suffer serious injury, such as a broken bone, is not determinative. U.C. kicked the child hard enough for him to drop to the floor and complain of pain. Moreover, U.C.’s kicking the child was not the only act he took that put the child in danger. Rather, U.C. pushed D.A. at least twice while she was holding the child. She could have dropped him, or fallen while holding him, causing him great bodily harm either way. After reviewing the evidence, we conclude that “a rational [trier of fact] could have found that the totality of the circumstances and conditions created a substantial danger of great bodily injury. [Citation.]” (*People v. Clark, supra*, 201 Cal.App.4th at p. 245.)

*B. Probation Condition:*

Ignoring the minute order stating that he shall not “associate with anyone *who [he] know[s]* is disapproved by the court, [his] parent/guardian, or probation officer, or anyone *who [he]know[s]* is on probation or parole . . .” (capitalization omitted; italics added), U.C. quotes the portion of the reporter’s transcript showing the court stated to him orally, “You are not to associate with anyone who is disapproved by the court or by probation.”

U.C. fixates on the oral pronouncement in isolation and claims the probation condition must be stricken because it is overbroad and vague. He cites numerous cases including: *In re Sheena K.* (2007) 40 Cal.4th 875, 891-892; *People v. O’Neil* (2008) 165 Cal.App.4th 1351; and *In re Justin S.* (2001) 93 Cal.App.4th 811, 816. U.C. states the probation condition orally announced at the dispositional hearing “should . . . be removed or modified to prohibit only association with people [he] knows are disapproved.”

However, as the People emphasize, no modification is necessary, inasmuch as the minute order corrected the oversight and imposed the scienter requirement. They cite *In re Byron B.* (2004) 119 Cal.App.4th 1013, approved by the Supreme Court in *In re Sheena K.*, *supra*, 40 Cal.4th at pp. 891-892. In *Byron B.*, the court’s oral ruling was ambiguous, but “its minute order did include the crucial words, ‘known to be.’” (*In re Byron B.*, *supra*, 119 Cal.App.4th at p. 1018.) The appellate court harmonized the oral ruling and the minute order and construed “the minute order [as] correctly recit[ing] the juvenile court’s ruling” that the minor in that case not have “contact with anyone *known to be* disapproved by” his parents, guardians, or probation officer. (*Id.* at pp. 1018, 1015.)

In the matter before us, we likewise harmonize the oral ruling and the minute order to conclude that the probation condition already states U.C. shall not

“associate with anyone *who [he] know[s]* is disapproved by the court, [his] parent/guardian, or probation officer, or anyone *who [he]know[s]* is on probation or parole . . . .” (Capitalization omitted; italics added.) It is unnecessary to modify the probation condition to add a knowledge requirement.

III

DISPOSITION

The orders are affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

THOMPSON, J.