

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Plaintiff and Respondent,

v.

IVY BEVERLY,

Defendant and Appellant.

B282338

(Los Angeles County  
Super. Ct. No. BA437706)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lisa B. Lench, Judge. Affirmed as modified.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

---

Ivy Beverly pointed a loaded gun at her husband and twelve-year-old step-son and was convicted by jury of child endangerment, assault, and possession of a firearm by a felon.<sup>1</sup> On appeal, she argues that (1) there was insufficient evidence she had care or custody of step-son in support of the child endangerment count, and (2) the trial court erred in failing to instruct on self-defense. We affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

On June 1, 2015, Beverly and father were married.<sup>2</sup> She had been living in the guest house behind father's house for approximately a year. Beverly had free access to the father's house where both father and step-son lived. She helped step-son with his homework, cleaned his room, bought him items, and cooked for him.

Approximately two weeks later, in mid-June 2015, Beverly took several of father's guns and gave them to a friend. She returned the guns to father a few days later.

On June 27, 2015, Beverly and father got into an argument inside father's house. Step-son heard Beverly say, "You're not leaving" as she slammed the door to father's room. Step-son was worried about father, and kicked the door open. Step-son saw Beverly "holding" father and saying, "you're not going anywhere." Step-son told Beverly to "get off him," and Beverly left the room.

---

<sup>1</sup> We hereafter refer to Beverly's husband and step-son as "father" and "step-son."

<sup>2</sup> There was evidence at trial that their marriage was invalid because father was already married to a different individual at the time. For the purposes of this appeal, the legality of the marriage is irrelevant. At the time of the incident, the evidence established that Beverly believed she was married to father.

Father and step-son decided to drive to the movies. Beverly followed them outside. As father and step-son started to get into father's truck, Beverly climbed in the passenger seat, and pushed father out of the cab, slapping and punching him. She then grabbed step-son's arms and pushed him out as he was trying to get in to the truck. She locked the doors, and step-son and father walked away.

As father was walking away, he remembered he had left a bag with several guns in the truck. He and step-son turned around, and walked back toward the house. When they approached the truck, step-son saw that Beverly "had the guns on the dashboard." Beverly pointed a loaded semiautomatic handgun at father and step-son.

As Beverly was pointing the gun at step-son, father stepped in front of him. Beverly continued to point the gun at father. Father told Beverly the gun was loaded and to put the gun down. Beverly exited the car while continuing to point the gun at them, then retreated to the guest house. The police were called, and approximately two hours later, Beverly surrendered to a SWAT team.

Beverly was charged with child endangerment (Pen. Code, § 273a, subd. (a)),<sup>3</sup> possession of a firearm by a felon (§ 29800, subd. (a)(1)), and two counts of assault with a firearm, one as to each victim (§ 245, subd. (a)(2)). She pled not guilty.

At trial, Beverly denied that she had pointed a gun at father and step-son. She testified that when she and father argued that day, before the incident with the guns, father had choked her and kicked her. She then followed father and step-son outside to the truck. She "squeeze[d]" past father in to the

---

<sup>3</sup> All further statutory references are to the Penal Code.

truck, and he choked her again. Father then “walk[ed] away.” At that point, Beverly grabbed “two loose guns” that were in the truck as well as a bag with other guns. She exited the vehicle. Father “came back” and told her to put the bag of guns down. She backed away and went in to her house.

A jury convicted her on all counts. The court sentenced her to prison for four years based on the following: four years on the child endangerment count, a concurrent term of two years on the firearm possession count, and concurrent terms of three years on the assault counts. The term for the assault count as against step-son was stayed pursuant to section 654. Beverly timely appealed.

### ***DISCUSSION***

1. *There is Substantial Evidence Beverly Had Care or Custody of Step-son*

Beverly first contends the child endangerment conviction is not supported by sufficient evidence. In particular, she challenges the jury’s implicit finding that she had care or custody of step-son as required by section 273a, subdivision (a). We disagree.

“ ‘In reviewing a challenge to the sufficiency of evidence, the reviewing court must determine from the entire record whether a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt. In making this determination, the reviewing court must consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment.’ [Citation.]” (*People v. Morales* (2008) 168 Cal.App.4th 1075, 1083.)

Section 273a, subdivision (a) prohibits a person who has care or custody of the child, from willfully placing the child in a situation that the child's person or health is endangered.

"Section 273a does not require that a defendant be related to a child. . . . [The] 'terms "care or custody" do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver.' There is 'no special meaning to the terms "care or custody" beyond the plain meaning of the terms themselves' that is indicated or intended. [Citation.] . . . '[T]he relevant question in a situation involving an individual who does not otherwise have a duty imposed by law or formalized agreement to care for a child (as in the case of parents or babysitters), is whether the individual in question can be found to have undertaken the attendant responsibilities at all. "Care," as used in the statute, may be evidenced by something less than an express agreement to assume the duties of a caregiver. That a person did undertake caregiving responsibilities may be shown by evidence of that person's conduct and the circumstances of the interaction between the defendant and the child; it need not be established by an affirmative expression of a willingness to do so.' [Citation.]" (*Morales, supra*, 168 Cal.App.4th at p. 1083.)

Here, the record showed that, at the time of the incident, Beverly had lived in a guest house behind father's home for approximately a year, and step-son lived in the main house, to which Beverly had access. Beverly and father had been married for three weeks. She helped step-son with his homework, cleaned his room, bought him items, and cooked for him. This was sufficient evidence from which the jury could have inferred that Beverly willingly assumed some of the duties of caring for step-son. (See, e.g., *People v. Perez* (2008) 164 Cal.App.4th 1462, 1472

[finding sufficient evidence that the defendant, who was often present at the minor’s house and had supervised the minor, “was one of several adults in the home who had care or custody of” her].)

2. *The Trial Court Was Not Required to Instruct on Self-Defense or Accident*

Beverly argues that the trial court erred in failing to instruct the jury on self-defense as to the assault against father and firearm possession counts. The trial court denied Beverly’s request for a self-defense instruction on the ground that her testimony was “inconsistent with” self-defense. Beverly now argues that, even though she testified that she did not point a gun at father, there was substantial evidence she possessed the gun and pointed it in self-defense. We disagree.

A court is not required to instruct on theories that lack substantial evidentiary support. (*People v. Burney* (2009) 47 Cal.4th 203, 246.) “ ‘ ‘ ‘Substantial evidence is evidence sufficient to “deserve consideration by the jury,” that is, evidence that a reasonable jury could find persuasive.’ ” ’ [Citation.]” (*People v. Benavides* (2005) 35 Cal.4th 69, 102.) We review the record independently to determine whether there is substantial evidence to support the defense. (*People v. Shelmire* (2005) 130 Cal.App.4th 1044, 1054–1055.)

“ ‘To justify an act of self-defense [for an assault charge under Penal Code section 245] the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him. [Citation.]’ [Citations.] The threat of bodily injury must be imminent [citation] and ‘ . . . any right of self-defense is limited to the use of such force as is reasonable under the circumstances.’ ” (*People v. Minifie* (1996) 13 Cal.4th 1055,

1065–1066.) A defendant’s belief in the need to defend herself must be objectively reasonable. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082–1083.)

The “right of self-defense does not extend beyond the time of real or apparent danger.” (*People v. Pinholster* (1992) 1 Cal.4th 865, 966 disapproved on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459.) A defendant may not invoke self-defense when, “through [her] own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), [she] has created circumstances under which [her] adversary’s attack or pursuit is legally justified. [Citation.]” (*In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1.)

Beverly contends that, even though the jury credited the victims’ testimony that she had pointed a gun at them, there was still substantial evidence she did so in self-defense. (See *People v. Elize* (1999) 71 Cal.App.4th 605, 610–615 [a jury is entitled to credit portions of a defendant’s case while disbelieving others].) Specifically, she points to her testimony that father had choked her earlier that day, and had at some point previously pointed a gun at her and threatened to kill her. We conclude this evidence does not show that Beverly was in imminent danger of physical harm when she pointed the gun at father.

According to Beverly’s testimony, father choked her in the truck and then walked away. She grabbed the guns at that point and exited the truck. “As” she was exiting the truck, father “came back” and “saw” her with the guns. He told her “to put the bag down” while she was “backing away from him.” Thus, at the time Beverly took possession of the guns, father’s alleged assault on her had ended and he was walking away. In addition, when father saw her holding the guns, she was backing away from him. She was the only one armed and she did not state that he was

threatening her, in fact, according to her own testimony, he was only telling her to put the bag of guns down. Any prior assault or physical struggle had ended at that time. Her general fear of father based on past acts of violence by him also did not justify her taking the guns or pointing a gun at father. Thus, as there was no evidence that father posed an imminent threat to Beverly, there was no substantial evidence supporting the theory of self-defense.

Beverly argues on appeal that the trial court should have instructed on transferred self-defense or accident. Her theory is that she had the right to act in self-defense as to father and it was only by accident that she pointed the firearm at step-son. Because there was no substantial evidence to support a theory of self-defense, the trial court also had no duty to instruct the jury on “transferred self-defense” with respect to the assault against step-son. (See *People v. Vallejo* (2013) 214 Cal.App.4th 1033, 1039 [the doctrine of transferred self-defense applies where “‘the act [in self-defense] is directed towards the unlawful aggressor and inadvertently results in the injury of a nonaggressive party.’” [Citation.]”].) Similarly, there was no substantial evidence supporting Beverly’s theory that she pointed the gun at step-son “by accident . . . in the course of her defending herself against” father.

3. *Beverly is Entitled to an Additional Day of Presentence Credit*

Beverly was given 664 days of presentence custody credit plus 99 days of presentence conduct credit. She argues, respondent concedes, and we agree that she is entitled to an additional day of presentence custody credit. She was arrested on June 27, 2015 and sentenced—664 days later— on April 21, 2017. However, the calculation of custody credits begins with the



day of the arrest and continues *through* the day of sentencing. (*People v. Bravo* (1990) 219 Cal.App.3d 729, 735.) Therefore, Beverly is entitled to an extra day of custody credit.

***DISPOSITION***

The judgment is modified to give Beverly an additional day of actual custody credit for a total of 764 days (665 days of custody credit + 99 days of conduct credit). The trial court is directed to amend the abstract of judgment accordingly and to forward a copy to the Department of Corrections. As modified, the judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

GRIMES, J.

STRATTON, J.