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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JOMARACE KWANCI ROBINSON, Defendant and Appellant.	B269961 (Los Angeles County Super. Ct. No. MA066963)

APPEAL from a judgment of the Superior Court of Los Angeles County, Andrew E. Cooper, Judge. Affirmed in part; reversed in part.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Jomarace Kwanci Robinson appeals from a judgment of conviction entered after a jury found him guilty of willful infliction of corporal injury on someone with whom the defendant had a dating relationship (Pen. Code, § 273.5, subds. (a), (b)(3)),[1] two counts of felony vandalism (§ 594, subd. (a)) and cruelty to a child by inflicting injury (§ 273a, subd. (b)).[2] Robinson admitted a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12) for which he served a prison term (§ 667.5, subd. (b)). The trial court sentenced Robinson to the upper term of four years for injury to a girlfriend, doubled as a second strike to eight years. Pursuant to section 654, the court stayed the execution of sentence on the two felony vandalism counts. As to count 4, cruelty to a child by inflicting injury, the court imposed a six-month sentence to be served consecutively to the eight-year state prison sentence.

On appeal, Robinson raises two claims. First, he contends the evidence was insufficient to support the actual injury element necessary for the conviction of cruelty to a child as charged in count 4. Because there was no evidence presented the child suffered physically or mentally, the conviction on count 4 must be reversed. Second, Robinson seeks reversal of all four counts because the trial court denied his request for a pinpoint instruction on the defense of accident. The trial court did not err

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[1] All further statutory references are to the Penal Code unless otherwise noted.

[2] The first three counts are felonies. Count 4, cruelty to a child by inflicting injury, is a misdemeanor.

by rejecting this instruction. Robinson's defense at trial was not that he committed the operative acts by accident; instead, he denied committing the acts all.

FACTS

On September 15, 2015, Andranique Adkins's car ran off the side of the road, over a water pipe, crashed into a Taco Bell sign and hit a tree. The prosecution presented evidence Robinson jumped on the hood of Adkins's moving car, punched Adkins multiple times in the face while she was driving and pulled on the steering wheel, intending to injure Adkins both by hitting her directly and by causing the car to crash. The prosecution argued Robinson inflicted unjustifiable physical pain and mental suffering on Adkins's two-year-old child, Jaylah, who was in the back seat of the car in her car seat when the car crashed. As part of its case, the prosecution introduced evidence of a prior domestic violence incident between Adkins and Robinson.[3]

Robinson, who testified in his own defense, denied the allegations. He testified Adkins got distracted when they were arguing over their respective infidelities and, due to Adkins's inattention, the car crashed. He denied committing any acts of domestic violence early that year.

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[3] The court admitted this evidence pursuant to Evidence Code section 1109 ["Evidence of defendant's other acts of domestic violence"].

A. *The Prosecution's Case*

1. *The Events Relating to the Collision at the Taco Bell*

The prosecution called three percipient witnesses to describe the events leading up to and after the collision. Lindsey McGriff was the prosecution's first witness. At roughly 11:00 a.m. on September 15, 2015, McGriff was driving west on Avenue S near the Taco Bell when she saw Adkins's car, which was about two car lengths ahead, pull to the side of the road. The cars around her started braking. When Adkins's car started to pull away from the curb, she saw Robinson run into the street, open the rear driver's side door, and dive head first into the back seat. Robinson then jumped into the front seat and hit Adkins with a closed fist at least five times in the head. Adkins's car sped up and almost hit the car in front of it. Adkins's car swerved toward the curb, almost hit a streetlight, came back into its lane, veered off the road, crashed through the Taco Bell sign, hit a tree and stopped.

Adkins got out of her car, opened the rear door and pulled Jaylah from the car seat. McGriff saw a small amount of blood on Adkins's face. Adkins was holding Jaylah, who was not crying and did not appear to be injured. Adkins and Robinson were yelling at each other. Adkins asked McGriff to call 911, which she did. The 911 call was played for the jury.

The second percipient witness was Callie Pratt. Pratt was standing across the street from the Taco Bell when she heard tires screeching. She saw Robinson holding onto the hood of Adkins's car with his left hand and punching Adkins in the face through the driver's side window with his right hand. She saw Robinson's punches connect twice. Adkins put up her hands to

block Robinson's blows and lost control of the car. The car went up the sidewalk and into a tree.[4]

James Glass was the last of the three percipient witnesses. Glass was driving in the opposite direction from Adkins on Avenue S when he saw Robinson holding onto the hood of Adkins's moving car. Glass called 911. The jury heard the recording. He did not see the crash and did not know why or how the car crashed. He did not see Robinson inside Adkins's car or punching the driver. After passing by Adkins's car, he made a U-turn at the light and headed back to find out what had happened.

The prosecution called Adkins as an adverse witness. Adkins testified she had been in a dating relationship with Robinson for about a year before the collision. Adkins had a two-year-old daughter, Jaylah. Robinson was not the father. On September 15, 2015, Adkins and Jaylah spent the morning with Robinson at his family's house in Palmdale. When Adkins got ready to leave at about 11:00 a.m., she put Jaylah in her car seat in the back seat of her car. She was taking Jaylah to see a doctor in Compton. She did not want Robinson to go with them. When she drove off from the house, she was alone in the car with Jaylah. On the way to the doctor's office, she got into a car accident near the Taco Bell. She hit her face on the steering wheel. She could not remember how or why the accident happened.

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[4] Pratt's testimony was inconsistent on several topics, including whether she saw Robinson's punches connect, whether she saw Robinson grab the steering wheel, and whether she saw Robinson inside the car striking Adkins, rather than on the hood of the car punching through the driver's side window.

Adkins denied Robinson was either inside the car or riding on the hood of the car at the time of the crash. Robinson arrived at the scene after 911 was called. Adkins did "not really" talk to Robinson at the scene, and they did not yell at one another. Jaylah was not hurt in the crash. She testified that Robinson did nothing wrong.

Los Angeles County Sheriff's Deputy James Al-Kassab responded to a radio call about a man riding on the hood of a car and arrived at the Taco Bell shortly after the collision. By the time he arrived, Robinson had already been handcuffed and detained by other deputies. Deputy Al-Kassab observed scrapes and small cuts on both sides of Adkins's face. The area under both of her eyes was discolored. Adkins appeared to be irate and was crying. Jaylah did not appear to be injured. Adkins later declined any medical treatment for Jaylah by the paramedics.

Deputy Al-Kassab interviewed Adkins at the scene of the collision. She explained the events leading up to the crash. Earlier that morning, Robinson did not want her to leave the house. Nonetheless, she got in the car with Jaylah and locked the doors. Robinson got on the hood of the car to prevent her from leaving. After she drove for some distance, she stopped, and Robinson got off the hood. Jaylah rolled down the rear window, and as Adkins tried to drive away, Robinson unlocked the rear door and got into the back seat. Robinson climbed over Jaylah and into the front seat. While she was driving, Robinson hit her in the face with his fists. She closed her eyes, and Robinson pulled on the steering wheel, causing the car to crash. Robinson grabbed her phone when she tried to call 911.

The damage to the Taco Bell sign and other property exceeded $9,000. The damage to Adkins's car exceeded $400.

2. *The Prior Domestic Violence Incident*

Adkins was asked about a prior incident involving domestic violence that took place on April 30, 2015. She denied Robinson injured her or damaged her property. She admitted getting into an argument with Robinson at roughly 4:00 a.m., but denied the argument turned physical; denied Robinson scratched her or poured bleach on her or her belongings; denied Robinson punctured her tires or damaged her car; and denied telling a police officer that Robinson did any of those things.

The prosecution called Los Angeles Police Officer Annel Rodriguez to impeach Adkins's credibility and to prove Adkins sustained injuries and damage to her property as a result of Robinson's conduct. Officer Rodriguez testified that on the afternoon of April 30th, she received a radio call concerning domestic violence. When she arrived at the scene, she spoke to Adkins, who appeared to be "emotionally shaken," with chemical burn marks on one shoulder, redness on her other shoulder, and scratches on her chest. Pictures of Adkin's physical condition were shown to the jury. Adkins told Officer Rodriguez about two incidents that occurred that day involving Robinson. The first incident began around 4:00 a.m. when Robinson scratched Adkins's chest and broke her cell phone. Later that same morning, they broke up. Upset, Robinson poured bleach on Adkins's book bag and splashed bleached on Adkins's chest.

The second incident took place that afternoon on the freeway. Adkins told Officer Rodriguez she ran out of gas while on the freeway with Jaylah in her car. Adkins's cousin arrived with Robinson. Her cousin left shortly thereafter, but Robinson stayed. He emptied papers from Adkins's book bag onto the sidewalk, and, while Adkins called 911, he slashed her tires.

Officer Rodriguez saw the flat tires. Pictures of the vehicle were shown to the jury.

B. *The Defense Case*

Robinson was the only defense witness.[5] He testified that he and Adkins had known each other since middle school, around 2007 or 2008. They had been best friends. Their relationship turned romantic in 2014. Their relationship became "rocky" when she found out he had cheated on her and the other woman was pregnant with his child. Robinson also found out Adkins was unfaithful.

Turning first to the alleged domestic violence incident on April 30th, Robinson denied anything violent happened. As to the 4:00 a.m. encounter, Robinson denied arguing with Adkins, pouring bleach on her or her belongings, scratching her, or breaking her cell phone. As to the second incident on the freeway, although he admitting getting a call that she ran out of gas on the freeway, he denied ever going to the freeway or puncturing her tires.

With respect to the events leading up to the crash on September 15th, Robinson explained that Adkins and Jaylah had spent the night with him at his parents' home. In the morning, Adkins confronted Robinson about his cheating, and the two argued. When Adkins got in her car to take Jaylah to the doctor, Robinson got onto the hood of her car and made faces at her to try to cheer her up. He got off the hood and walked alongside the car as Adkins backed out of the driveway. Adkins let him into the

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[5] At the outset of his testimony, Robinson admitted a 2012 robbery conviction.

car. He wanted to go somewhere to talk about the situation, but they started arguing.

Halfway down Avenue S in the direction of the Taco Bell, Adkins pulled over and asked Robinson to check the air in one of the tires on the passenger side of the car. The tire was fine. Robinson tried to get back in the car, but Adkins drove ahead, stopped, and when he reached for the door handle, she did the same thing. After playing this start and stop "game," Robinson got on the hood of the car to cheer her up in the same way he had tried earlier that morning.[6] Adkins moved the car forward. Robinson got off the hood and jumped into the car. He asked Adkins about the start and stop game. "Why were you doing that?" Adkins responded angrily, "I was playing with you because you were playing with me," referring to his cheating.

They argued as Adkins drove. They pointed fingers in one another's face as they accused each other of cheating. Robinson did not hit or punch Adkins. Adkins was not paying attention to her driving, and at one point her car came very close to a car in the next lane. Adkins and Robinson were still yelling and "in the heat of the moment," "we wasn't paying attention to the road," and the car crashed near the Taco Bell.

Robinson could not recall grabbing the steering wheel or whose hand was on the steering wheel just before the crash. He had no memory of trying to grab the wheel. It "could have been both of our hands" on the wheel. He denied trying to cause the crash. He described the collision as an accident.

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[6] Robinson told Deputy Al-Kassab that getting on the hood of the car "was a joke, playing. [Adkins] would get on the hood; I would get on the hood."

After the crash, Robinson and Adkins argued about the crash. He accused her of not paying attention, and she told him, "If you didn't have your hand in my face, I wouldn't have crashed."

DISCUSSION

A. *Substantial Evidence Did Not Support Robinson's Conviction for Cruelty to a Child by Inflicting Injury*

Section 273a, subdivision (b), (section 273a(b)) provides: "Any person who, under circumstances or conditions other than those 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, . . . is guilty of a misdemeanor."[7] At the end of the trial, the jury was instructed, in relevant part, as follows: "The defendant is charged in [c]ount 4 with child abuse. [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] The defendant willfully caused or permitted a child to suffer unjustifiable physical pain *or* mental suffering; [¶] AND [¶] The defendant was criminally negligent when he caused or permitted the child to suffer or be endangered." We consider whether the evidence

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[7] The prosecution did not charge Robinson with violating section 273a(b) by placing Jaylah in a situation where her "person or health may be endangered." (See § 273a(b)["Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, . . . or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor." Robinson was charged with inflicting injury on Jaylah.

presented was sufficient to show Robinson caused or permitted Jaylah to suffer physical pain or mental suffering.

Both parties rely on *People v. Burton* (2006) 143 Cal.App.4th 447 (*Burton*). In *Burton*, the victim, who was preparing to drive to work, had placed her two-year-old son in his car seat, while her eight-year-old son was a short distance away. As she walked to the other side of the car, the defendant—the children's father—appeared, punched her several times and then ran away. The victim suffered deep cuts to her face, lost her balance and fell to the ground. (*Id*. at pp. 451, 453.) The People charged the defendant with violating section 273a(b) with respect to the older son: willfully causing or permitting him to suffer, and inflicting unjustifiable mental suffering on him. (*Id*. at p. 454.)

The court assessed whether "[t]he record contains substantial evidence that defendant's attack on [the victim] caused or inflicted on his older son unjustifiable mental suffering." (*Burton*, *supra*, 143 Cal.App.4th at p. 455.) The court pointed to the operative facts: "Following the attack, the [boy] screamed, 'we have to go, we have to get out of here, we have to leave, he's going to come back'; the boy, who was only eight years old at the time, actually tried to put [the victim's] car in reverse himself. We must bear in mind that the attacker was not just anyone, but the [boy's] father, and the victim was not just anyone, but the [boy's] mother, whose face had been slashed severely. Subsequently, the [boy] expressed his suffering by writing in his journal, 'I hate my life. I wish I was dead by a gun or a knife. I wish I was never born. I hate my life.' Before the attack, the [boy] never got in trouble at school; now he lands in trouble daily and sees a counselor weekly." (*Ibid*.) Based upon

these facts, the court found substantial evidence of mental suffering.

Unlike the evidence relating to the eight-year-old boy in *Burton*, the prosecution here did not present any evidence that Jaylah experienced physical pain or mental suffering.[8] Indeed, several witnesses testified Jaylah was not injured: McGriff testified Jaylah did not appear to be injured; Adkins testified Jaylah was not hurt; Deputy Al-Kassab testified Jaylah was not injured. Although paramedics from the fire department arrived at the crash site, the prosecution did not call any of the paramedics to testify concerning their observations of Jaylah.

Similarly, there was no evidence of any mental suffering. No one saw Jaylah crying after the accident. McGriff specifically testified Jaylah was not crying. The prosecution did not elicit any testimony concerning Jaylah's behavior during the car ride. There was no testimony whether Jaylah was awake during the car ride, saw or heard anything or responded to anything during the car ride. Nor did the prosecution present testimony concerning Jaylah's behavior after the accident. The prosecution did not elicit from Adkins, or any other source, that Jaylah subsequently exhibited any mental or emotional distress or symptoms related to the attack or the accident. Nor did the prosecution present an expert witness to discuss how the events of September 15th may have impacted Jaylah.[9]

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[8] Notably, the defendant in *Burton* was not charged with a violation of section 273a(b), as to his younger son, the two-year-old, who remained in his car seat throughout the attack.

[9] Expert testimony may have been admissible to educate the jury on whether Jaylah experienced mental suffering as a result of these events. Under Evidence Code section 801, expert witness

The People rely on *Burton* for the proposition the jury could reasonably "infer that Jaylah's graphic, close-up view of [Robinson's] attack and its consequences would cause mental suffering." In *Burton*, however, there was substantial evidence the older son actually suffered mentally as a result of witnessing the defendant's attack. In the present case, no such evidence was presented.[10]

In assessing the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine if it contains substantial evidence—i.e., 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. (*People v. Solomon* (2010) 49 Cal.4th

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opinion testimony is admissible "on any subject [that is] 'sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.'" (*People v. Brown* (2004) 33 Cal.4th 892, 905). Whether a two-year-old child, who exhibited no evidence of suffering, may have actually experienced mental suffering would come within the scope of Evidence Code section 801. (See, e.g., *In re Amy M.* (1991) 232 Cal.App.3d 849, 865 [expert testimony as to whether child removed from parents' custody suffered emotional damage]; cf. *People v. Sandoval* (2008) 164 Cal.App.4th 994, 1002 [""expert testimony is needed to disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-impeaching behavior""].)

10 We are acutely aware of and agree with the comments made in *Burton* concerning the dangers of domestic violence, both directly and indirectly, to children. This case may well have offered the prosecution an opportunity to present evidence concerning the impact of domestic violence on the very young. The prosecution did not avail itself of this opportunity.

792, 811.) We presume in support of the judgment the existence of any fact the jury reasonably could have deduced from the evidence. (*People v. Vines* (2011) 51 Cal.4th 830, 869.) We must accept any logical inferences that the jury could have drawn even if we would have reached a contrary conclusion. (*Solomon*, *supra*, at pp. 811-812.)

However, "[s]peculation is not substantial evidence. [Citation.] "'To be sufficient, evidence must of course be substantial. It is such only if it "'reasonably inspires confidence and is of 'solid value.'"' By definition, 'substantial evidence' requires *evidence* and not mere speculation. In any given case, one 'may *speculate* about any number of scenarios that may have occurred . . . . A reasonable inference, however, may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence.'" [Citation.]" (*People v. Ramon* (2009) 175 Cal.App.4th 843, 851; accord, *People v. Gonzales* (2015) 232 Cal.App.4th 1449, 1466)

Here, there is only speculation. The prosecution did not present any evidence Jaylah suffered either physically or mentally from Robinson's actions. Consequently, count 4 must be reversed.

B. *The Trial Court Did Not Err by Failing To Instruct on the Defense of Accident*

Defense counsel requested an instruction on the defense of accident, CALCRIM No. 3404.[11] The trial court refused to give

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11 CALCRIM No. 3404 reads:

the instruction, explaining, "It appears, based on the court's analysis of the evidence that I heard, that the crash was caused by an intentional act. It was not an accident and does not fall within the definition of this instruction. . . . [V]iewing . . . the facts of this case from any angle, even in a light most favorable to Mr. Robinson, it appears that . . . any injuries, any damage were caused by an intentional act of Mr. Robinson and not by accident, so that instruction will not be provided."

Defense counsel, nonetheless, argued to the jury that "what happened here, an accident, a car accident after people were arguing and not looking at the road, bad driving. It's not a crime. It's an accident." Following closing argument, defense counsel renewed his request for the CALCRIM No. 3404 instruction.

The trial court again denied the request, noting, "The evidence is that the victim's injuries were caused by an intentional act of [Robinson], not an accident. You both used the term *accident* in your argument. I understand why. It's a

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General or Specific Intent Crimes

"[The defendant is not guilty of _____ <*insert crime[s]*> if (he/she) acted [or failed to act] without the intent required for that crime, but acted instead accidentally. You may not find the defendant guilty of _____ <*insert crime[s]*> unless you are convinced beyond a reasonable doubt that (he/she) acted with the required intent.]"

Criminal Negligence Crimes

"[The defendant is not guilty of _____ <*insert crime[s]*> if (he/she) acted [or failed to act] accidentally without criminal negligence. You may not find the defendant guilty of _____ <*insert crime[s]*> unless you are convinced beyond a reasonable doubt that (he/she) acted with criminal negligence. *Criminal negligence* is defined in another instruction.]"

common term that is used to describe a collision. There was a collision here. I do not find it was an accident. Whether jumping on the hood, grabbing the steering wheel, or punching the victim, this is what led to the accident, an intentional act by [Robinson], not an incidental act."

The trial court must instruct the jury on a defense if requested by the defendant and if the defense is supported by substantial evidence. (*People v. Nguyen* (2015) 61 Cal.4th 1015, 1049; accord, *People v. Larsen* (2012) 205 Cal.App.4th 810, 823.) In this context, "'[s]ubstantial evidence is "evidence sufficient 'to deserve consideration by the jury,' not 'whenever *any* evidence is presented, no matter how weak.'" [Citations.]" (*People v. Wilson* (2005) 36 Cal.4th 309, 331; accord, *Larsen*, *supra*, at p. 823.) "In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt . . . .' [Citations.]" (*People v. Salas* (2006) 37 Cal.4th 967, 982-983; accord, *Larsen*, *supra*, at pp. 823-824.) The court must resolve any doubts regarding the sufficiency of the evidence in favor of the defendant. (*Larsen*, *supra*, at p. 824.)

The defense of accident is available to "[p]ersons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence." (§ 26, subd. Five; accord, *People v. Anderson* (2011) 51 Cal.4th 989, 996.) "The accident defense amounts to a claim that the defendant acted without forming the mental state necessary to make his or her actions a crime. [Citations.]" (*People v. Lara* (1996) 44 Cal.App.4th 102, 110; accord, *Anderson*, *supra*, at p. 998.)

The prosecution presented evidence Robinson intended to injure Adkins by hitting her directly or by crashing the car. Either way, the prosecution's case rested on the notion Robinson intentionally acted to injure Adkins by 1) jumping on the hood of the car, 2) punching her directly in the face, or 3) grabbing the steering wheel. The court recognized that if the jury believed any of these acts took place, they were done intentionally.

Naturally, the jury did not have to believe the prosecution's version of events and the court was obligated to instruct the jury on the defense of accident if substantial evidence supported Robinson's claim he injured Adkins accidentally. But Robinson did not make such a claim at trial. Instead, he denied committing the operative acts at all. He denied jumping on the hood of the car while Adkins drove towards the Taco Bell. He denied punching Adkins in the face or hitting her while she was driving. He did not remember if he grabbed the steering wheel.[12]

Robinson did not present substantial evidence he committed any act accidentally. He did not testify, for example, that he jumped on the hood of the car accidentally, or punched Adkins accidentally, or grabbed the steering wheel by accident. While it may be true Adkins did not intend to crash the car, her

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[12] His lack of recollection on whether he grabbed the steering wheel undermines his claim of substantial evidence. (*Horn v. Bradco Internat., Ltd.* (1991) 232 Cal.App.3d 653, 664, fn. 13 [statement that the witness could not recall an event is not substantial evidence the event occurred]; *People v. Thomas* (1990) 219 Cal.App.3d 134, 144 [testimony of witness who was intoxicated and could not remember the details of what occurred did not amount to substantial evidence].)

intent was not at issue. His was. Accordingly, the court's decision not to give the accident instruction was not error.

In any event, because the jury was properly instructed on the elements of the offenses and the jury found Robinson to have acted with the requisite intent, any error in failing to give CALCRIM No. 3404 was harmless under any standard. (See *Chapman v. California* (1967) 386 U.S. 18, 24 [87 S.Ct. 824, 17 L.Ed.2d 705] [federal constitutional error is reversible unless it was harmless beyond a reasonable doubt]; *People v. Watson* (1956) 46 Cal.2d 818, 837 [state law error is reversible if it is reasonably probable that the defendant would have obtained a more favorable result without the error].)

To have convicted Robinson of inflicting injury on Adkins, the jury necessarily found he "willfully inflicted a physical injury" on her. (CALCRIM No. 840.) In other words, he did not hit her or cause her car to crash accidentally; he did it "on purpose." (*Ibid.*)[13] The jury rejected Robinson's testimony that the car crashed due to Adkins's inadvertence. Instead, the jury found not only that he committed the acts that led to the crash, but also that he did so with the intent to injure Adkins directly (by punching her) or by causing the car to crash and thereby injure her. In so doing, the jury necessarily found Robinson had the requisite intent to commit the crimes. (See *People v. Jones* (1991) 234 Cal.App.3d 1303, 1315 [trial court's failure to instruct on "'accident and misfortune'" was harmless beyond a reasonable doubt where the jury was properly instructed on elements of the

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[13] Similarly, in order to convict Robinson of felony vandalism, the jury found that Robinson "maliciously damaged or destroyed real or personal property," i.e., that he "intentionally [did] a wrongful act." (CALCRIM No. 2900.)

offense and found the requisite intent thereby rejecting the defense of accident and misfortune], disapproved on another ground in *People v. Anderson*, *supra*, 51 Cal.4th at p. 998, fn. 3; cf. *People v. Wright* (2006) 40 Cal.4th 81, 98 [failure to give instruction harmless where "'the factual question posed by the omitted instruction was necessarily resolved adversely to the defendant under other, properly given instructions'"]; *People v. Lujano* (2017) 15 Cal.App.5th 187, 196, petn. for review pending, petn. filed Sep. 14, 2017 [same].)

DISPOSITION

Robinson's conviction on count 4 is reversed and the sentence thereon vacated. In all other respects, the judgment is affirmed.

BENSINGER, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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