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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE WADE OSBORNE,

Defendant and Appellant.

B294930

(Los Angeles County  
Super. Ct. No. 8PH06704)

APPEAL from an order of the Superior Court of  
Los Angeles County, Robert M. Kawahara, Commissioner.  
Affirmed.

Heather E. Shallenberger, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,  
Senior Assistant Attorney General, Zee Rodriguez, Supervising  
Deputy Attorney General, Paul S. Thies, Deputy Attorney  
General, for Plaintiff and Respondent.

Dwayne Wade Osborne appeals from an order revoking his parole, contending the evidence was insufficient to support a finding he had violated one of its conditions. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Osborne's Murder Conviction and Release on Parole*

In July 1991 Osborne was convicted of second degree murder (Pen. Code, § 187)<sup>1</sup> and sentenced to an indeterminate term of 15 years to life. He was released on parole in December 2014 subject to various terms and conditions, including a prohibition on engaging in criminal conduct. That condition provided, “You shall not engage in conduct prohibited by law (state, federal, county or municipal). You shall immediately inform your parole agent if you are arrested for any felony or misdemeanor crime. Be advised, your conduct, if prohibited by law, may result in a parole revocation with or without a criminal conviction.”

### *2. Osborne's Arrest for Infliction of Corporal Injury on a Spouse and the Petition for Revocation of Parole*

On October 23, 2018 Osborne was arrested for committing battery on his wife, Adrienne Osborne.<sup>2</sup> (§ 273.5, subd. (a).) A petition to revoke parole was filed on October 30, 2018, alleging Osborne had thrown his cell phone at Adrienne during an argument, causing two lacerations to her face. The petition further alleged Osborne's actions were a violation of the parole

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<sup>1</sup> Statutory references are to this code.

<sup>2</sup> Because Osborne and his wife share the same surname, we refer to the latter by her first name.

condition that he not engage in criminal conduct.<sup>3</sup> The court found probable cause to support revocation and preliminarily revoked parole pending a full hearing.

### *3. The Revocation Hearing*

The contested revocation hearing was held on January 3, 2019. Adrienne testified that on the evening of October 23, 2018 she and Osborne had plans to see a movie; however, Osborne was out with friends and did not return home in time for the movie. Adrienne telephoned him three times over the course of an hour and a half, but Osborne did not answer her calls or otherwise respond to them. When Osborne eventually returned home, Adrienne met him in front of the house. Adrienne said she was “infuriated” with Osborne and began “yelling and cussing” at him for ignoring her telephone calls. She testified Osborne ignored her and told her to calm down.

After approximately 30 to 45 minutes of arguing over the missed telephone calls, Osborne yelled, “Fuck this phone” and threw the phone. The phone hit Adrienne, who was standing approximately 10 to 15 feet away, in the face, causing a one-half-inch cut on her forehead and a one-inch cut on her lip. Adrienne testified she did not believe Osborne intended to throw the phone at her, that it was an accident. She said it was dark outside and

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<sup>3</sup> The petition also alleged Osborne was inebriated when he was arrested, which violated the condition of his parole prohibiting him from consuming alcoholic beverages. After the revocation hearing the court found the People had not proved by a preponderance of the evidence Osborne was inebriated at the time of his arrest.

she “just happened to be, you know, within the direct line of where the phone was being thrown.”

Adrienne realized she was bleeding from where the phone struck her, which made her “extremely pissed.” She called the police, hoping they could prevent Osborne from staying in the house that night. Adrienne acknowledged she had told the responding police officers Osborne was intoxicated and had chased her around a car, but during the hearing she testified those statements were untrue and she had said them because she was angry and wanted Osborne to leave. One of the responding police officers testified that, when she arrived on the scene, she observed Adrienne with blood dripping down her face and identified two lacerations, one on her forehead and one on her lip. Both responding officers recounted Adrienne had said Osborne threw the phone at her during their argument.

Osborne did not present any witnesses in his defense.

After giving the parties an opportunity to argue, the court found that during a prolonged, heated argument Osborne intentionally threw his phone at Adrienne, causing significant injury. The court stated, “[T]he court finds that Mr. Osborne did throw the phone. And in terms of the physical description as to how it happened, where they were, [the] court finds that he did throw it intentionally at her. . . . And it did cause a significant injury. . . . And it would have to be a pretty significant or pretty strong throw to cause that much injury with a cell phone.” The court found Osborne had violated a condition of his parole supervision by engaging in criminal conduct, specifically a willful infliction of corporal injury on a spouse. The court revoked Osborne’s parole and remanded him to the custody of the Department of Corrections and Rehabilitation.

## DISCUSSION

### 1. *Governing Law and Standard of Review*

When an individual has been sentenced to a maximum term of life imprisonment for first or second degree murder and has been released on parole supervision, a court may revoke and terminate parole if “the court determines that the person has committed a violation of law or violated his or her conditions of parole . . . .” (§ 3000.08, subd. (h); see also § 3000.1, subd. (a)(1).) The standard of proof for finding a parole violation is preponderance of the evidence. (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 441-442, 446-447; *In re Miller* (2006) 145 Cal.App.4th 1228, 1234-1235.) We review a decision to revoke parole for substantial evidence (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318), according great deference to the trial court’s ruling, “bearing in mind that ‘[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court.’” (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)<sup>4</sup>

In reviewing the trial court’s decision for substantial evidence, we “‘presume[] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ [Citation.]’ [Citations.] ‘Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal

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<sup>4</sup> “Parole and probation revocation hearings are equivalent in terms of the requirements of due process.” (*People v. Rodriguez, supra*, 51 Cal.3d at p. 441; accord, *People v. Shepherd* (2007) 151 Cal.App.4th 1193, 1198 “[p]arole revocation and probation revocation after the imposition of a sentence are constitutionally indistinguishable”].)

of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.

[Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.” (*People v. Lee* (2011) 51 Cal.4th 620, 632; accord, *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681 [“The standard is deferential: ‘When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . ”].)

## *2. Substantial Evidence Supports the Decision To Revoke Parole Supervision*

Section 273.5, subdivision (a), provides, “Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony.” The offender’s current spouse is included in the definition of a victim in subdivision (b). Subdivision (d) states that a “‘traumatic condition’ means a condition of the body, such as a wound or external or internal injury, . . . whether of a minor or serious nature, caused by physical force.”

The evidence before the trial court amply supported the finding, by a preponderance of the evidence, that Osborne had willfully inflicted corporal injury on a spouse, violating a condition of his parole. Adrienne testified, before Osborne threw the phone, she and Osborne had been arguing for 30 to 45 minutes, during which time she was infuriated, yelling and cussing at him. Adrienne also testified Osborne threw the phone

“in the direct line” of where she was standing. It was undisputed the phone hit Adrienne in the face, causing two lacerations and bleeding. While Adrienne testified she had lied to the police about certain events that evening, her statements to the police that Osborne threw the phone at her, properly admitted at the hearing, were consistent with her testimony that he had deliberately thrown the phone, hitting her in the face. Although there was no testimony regarding the force with which Osborne threw the phone, the evidence the parties had been engaged in a prolonged, heated argument; Osborne’s exclamation, “Fuck this phone” as he threw it; and the resulting injury to Adrienne fully support an inference Osborne intentionally threw the phone at Adrienne with enough force to cause injury.

On appeal Osborne argues there was not substantial evidence he willfully inflicted injury on Adrienne because there was no evidence he intended to throw the phone at her and cause her injury. Instead, Osborne argues, the injury was an accident, at most the result of his negligence. Osborne’s argument misapprehends the intent required to constitute a violation of section 273.5. “As a general rule, a statute proscribing willful behavior is a general intent offense. . . . The only intent required for a general intent offense is the purpose or willingness to do the act or omission.” (*People v. Thurston* (1999) 71 Cal.App.4th 1050, 1053.) Accordingly, “section 273.5, subdivision (a) requires only the mens rea of intending to do the assaultive act.” (*Id.* at p. 1055.) There is no requirement a defendant intend to cause an injury. (*Id.* at pp. 1054-1055 [“[t]he pivotal question is whether the defendant intended to commit an act likely to result in such physical force, not whether he or she intended a specific harm” (italics omitted)]; see also *People v. Burton* (2015)

243 Cal.App.4th 129, 134, fn. 8 [Section 273.5 does not require “the specific intent to injure. Rather, it requires a ‘willful’ act which results in an injury and is thus a general intent crime.”].)

Here, Osborne does not dispute he intentionally threw the phone, but argues he did not intend to injure Adrienne. But as discussed, the intent required was not that he specifically intended to strike Adrienne with the phone and cause injury, but that he intended to commit an act likely to result in the application of physical force to Adrienne. Given the distance between Osborne and Adrienne, the fact he threw the phone in a direct line toward her, and the force with which he threw it, it was reasonably foreseeable the phone would hit Adrienne and injure her. Accordingly, Osborne’s intent to throw the phone satisfied the willfulness requirement of section 273.5, and his claim of insufficient evidence fails.

### **DISPOSITION**

The order revoking parole and remanding Osborne to the custody of the Department of Corrections and Rehabilitation is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

STONE, J.\*

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