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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ANGEL JUAREZ, Defendant and Appellant.	B232247 (Los Angeles County Super. Ct. No. BA375652)

APPEAL from a judgment of the Superior Court of Los Angeles County, William N. Sterling, Judge. Affirmed.

Law Offices of Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Stacy S. Schwartz and Eric J. Kohn, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Angel Juarez was charged in a four count information with attempted murder (Pen. Code § 664/187, subd. (a)); corporal injury to a spouse, cohabitant or fellow parent (§ 273.5, subd. (a)); felony child endangerment or abuse (§ 273a, subd. (a)); and disobeying a restraining order (§ 166, subd. (a)(4)).[1] He was found guilty of the latter three offenses and sentenced to terms of one year and four months on the second count, six years on the third count and one year on the fourth count, all to run consecutively. On appeal, he contends that substantial evidence did not support the jury's verdict on the child endangerment charge and that the trial court erred in refusing to stay the sentence on that count. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Evidence at Trial*

Alicia F. testified appellant was the father of her two children -- Jason, who was four when the offenses occurred, and Valerie, who was two. Alicia and appellant had lived together from July 2009 until July 2010. In December 2009, they quarreled when Alicia refused to have sex with him. Appellant accused her of cheating. He pulled her hair, pushed her to the floor and punched her repeatedly. In July 2010, she ended the relationship.

Several months after the separation, on September 3, 2010, Alicia drove the children to their paternal grandparents' house, where appellant was living, for a visit. Jason got out of the car by himself and was taken into the house by a paternal relative. Alicia got out of the car and bent over the back seat to unbuckle Valerie from her car seat. When she turned around, appellant was standing very close to her.

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[1] Undesignated statutory references are to the Penal Code.

Appellant tried to hug Alicia as she was holding her young daughter. She told him to stop and handed the child to appellant, who took her with his left hand. As Alicia attempted to get back into the car, appellant grabbed her wrist and again tried to hug and kiss her. When he told Alicia he wanted to talk, she said "no, not right now, I don't have time." Appellant was angry. Before Alicia could get away, appellant stabbed her in the left side of her chest, just above the breast. She was bleeding and in pain. She sat down in the driver's seat and saw a thin metal object in appellant's right hand, aimed at her stomach. Appellant was mad, crying and begging. Alicia said "stop," grabbed appellant's hand, and "stepped on the gas and took off" with the driver's door still open. Appellant was close enough to prevent her from closing the door, still holding the child in his left arm.

Alicia drove to work and went to her boss's office. Seeing Alicia bleeding, her boss called 911. Paramedics transported Alicia to the hospital where she was treated for her wound. It did not require stitches, but was still painful at the time of trial, some six months after the incident.

Officers went to the home of appellants' parents, where appellant had locked himself in a bedroom. After appellant threatened to kill himself, an officer forcibly entered the room to find appellant, seated, with an ice pick pointed at his chest.

B. *Pertinent Jury Instructions*

The jury was instructed that to prove the child endangerment charge, the prosecution had to prove: "1. [Appellant], while having care or custody of a child, willfully caused or permitted the child to be placed in a situation where the child's person or health was endangered; [¶] 2. [Appellant] permitted the child to be endangered under circumstances or conditions likely to produce great bodily harm or death; [¶] AND [¶] 3. [Appellant] was criminally negligent when he permitted the child to be endangered."

The jury was further instructed: "Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when, one, he or she acts in a reckless way that is a gross departure from the way an ordinarily careful person would act in the same situation; two, the person's acts amount to disregard for human life or indifference to the consequences of his or her acts; and, three, a reasonable person would have known that acting in that way would naturally and probably result in harm to others."[2]

DISCUSSION

A. *Substantial Evidence*

Appellant contends there was insufficient evidence to support the jury's guilty verdict on the felony child endangerment charge. For the reasons discussed, we disagree.

Section 273a proscribes four essential categories of conduct: (1) "inflict[ing]" on any child "unjustifiable physical pain or mental suffering"; (2) "willfully caus[ing] or permit[ting] any child to suffer . . . unjustifiable physical pain or mental suffering"; (3) "[while] having the care or custody of any child, willfully caus[ing] or permit[ting] the person or health of that child to be injured"; and (4) "[while] having the care or custody of any child, . . . willfully caus[ing] or permit[ting] that child to be placed in a situation where his or her person or health

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[2] The phrase "'likely to produce great bodily harm or death'" was defined to mean "the probability of great bodily harm or death is high." "Great bodily harm" was defined to mean "significant or substantial physical injury. It is an injury that is greater than minor or moderate harm." The jury was also given a definition for "unjustifiable physical pain or mental suffering" -- defined as "pain or suffering that is not reasonably necessary or is excessive under the circumstances" -- although that phrase did not appear in the instruction defining the offense.

is endangered." (§ 273a; see *People v. Valdez* (2002) 27 Cal.4th 778, 783, 784, fn. 3; *People v. Sargent* (1999) 19 Cal.4th 1206, 1215; CALCRIM Nos. 821, 823.) If such conduct occurs "under circumstances or conditions likely to produce great bodily harm or death," the offense is a felony. (§ 273a, subd. (a).) If the conduct occurs "under circumstances or conditions other than those likely to produce great bodily harm or death," the offense is a misdemeanor. (*Id*., subd. (b).)

Section 273a, subdivision (a) is "'intended to protect a child from an abusive situation in which the probability of serious injury is great.'" (*People v. Sargent*, *supra*, 19 Cal.4th at p. 1216.) A violation of section 273a, subdivision (a) "'can occur in a wide variety of situations: the definition broadly includes both active and passive conduct, i.e., child abuse by direct assault and child endangering by extreme neglect.'" (*People v. Sargent*, at pp. 1215-1216.) "Section 273a does not focus upon actual injury produced by abusive actions but 'rather upon whether or not the attendant circumstances make great bodily injury likely. Occurrence of great bodily injury is not an element of the offense.'" (*People v. Lee* (1991) 234 Cal.App.3d 1214, 1220.)

Here, the jury was instructed in accordance with the fourth category set forth above, viz., that appellant was guilty if the prosecution proved that "while having care or custody of a child," appellant "willfully caused or permitted the child to be placed in a situation where the child's person or health was endangered . . . under circumstances or conditions likely to produce great bodily harm or death." The prosecution's evidence supported the finding of guilt. Alicia's testimony established that appellant, while deeply distraught and holding Valerie in one arm, attacked Alicia with a sharp and dangerous weapon. After the first blow, Alicia struggled with him, attempting to push the hand bearing the weapon away. Valerie was within inches of the instrument that punctured her mother's chest and was poised to puncture her stomach. The slightest movement during the struggle could

have resulted in Valerie's sustaining serious injury. Moreover, even after Alicia sat down in the driver's seat and indicated her intention to drive away, appellant, still holding Valerie, attempted to block Alicia's escape by standing close enough to the car to prevent Alicia from closing the door. When Alicia "stepped on the gas and took off," appellant could easily have lost hold of the child, or he and Valerie could have been hit by the car. On this evidence, the jury could reasonably conclude that appellant willfully placed Valerie in a situation that exposed her to danger of great bodily harm or death. (See *People v. Sargent*, *supra*, 19 Cal.4th at p. 1223 ["It is for the trier of fact to determine whether the act was done 'under circumstances or conditions likely to produce great bodily harm or death,' i.e., under conditions 'in which the probability of serious injury is great.'"]; *Williams v. Garcetti* (1993) 5 Cal.4th 561, 574 ["Under the criminal negligence standard, knowledge of the risk is determined by an objective test: '[I]f a reasonable person in defendant's position would have been aware of the risk involved, then defendant is presumed to have had such an awareness.'"].)[3]

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[3] The parties devote a considerable portion of their briefs to discussing whether any mental suffering Valerie endured as a result of observing the attack on her mother would, standing alone, support the verdict. (See *People v. Burton* (2006) 143 Cal.App.4th 447, 454-455 [upholding conviction of misdemeanor child abuse under theory that defendant "willfully caused or permitted the minor to suffer, or inflicted unjustifiable mental suffering on him" where minor was "on the scene" when defendant attacked minor's mother, not "near enough to be in danger of physical injury," but able to "witness[] its bloody immediate aftermath"]; *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1442-1444 [defendant's right to parent and right of free expression not infringed where he was found guilty of misdemeanor child abuse based on "willfully inflict[ing] unjustifiable mental suffering," where evidence established he falsely told his children their grandfather was child molester and leader of satanic cult who intended to abduct or kill them, and that grandfather and children's mother had molested them in the past].) As we conclude that substantial evidence of physical danger to Valerie supported the verdict, we need not resolve whether any mental suffering she may have endured would also have supported the jury's finding.

B. *Section 654*

Section 654, subdivision (a) provides: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." Section 654 precludes multiple punishments for a single act and also for multiple acts constituting an indivisible course of conduct. (*People v. Hester* (2000) 22 Cal.4th 290, 294.) The purpose of the statute "is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime." (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) "Section 654 is not '. . . applicable where . . . one act has two results each of which is an act of violence against the person of a separate individual." (*Neal v. State of California* (1960) 55 Cal.2d 11, 20-21.)

Appellant contends that section 654 requires the sentence on the child endangerment count to be stayed because the convictions for injury to Alicia and for child endangerment "stemmed from a single act, the stabbing of Alicia" and that "there was no act of violence against the child, only Alicia."

This issue was resolved in *People v. Pantoja* (2004) 122 Cal.App.4th 1, where the defendant was convicted of first degree murder and felony child endangerment after savagely killing his girlfriend with a knife while their child was in the same room. The defendant argued that his sentence on the child endangerment count should have been stayed pursuant to section 654 because "'both convictions and sentences result[ed] from [defendant's] single act of causing the death of [his girlfriend].'" (*People v. Pantoja, supra*, 122 Cal.App.4th at p. 15.) Citing *Neal v. State of California*, for the proposition that "'[a] defendant who commits an act of violence with the intent to harm more than one person *or by a means likely to cause harm to several persons* is more culpable than a defendant

who harms only one person,'" the court rejected the defendant's contention, finding that "he may be punished separately for th[e] separate crime [committed against the child]." (122 Cal.App.4th at pp. 15-16.) Here, appellant's conviction of felony child endangerment necessarily required the jury to conclude that he committed the acts of violence against Alicia by means likely to cause harm to Valerie. Accordingly, he harmed two individuals by his wrongdoing and may be punished separately for the two offenses.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.