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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.

HECTOR ERNEST, JR.,

Defendant and Appellant.

B232792

(Los Angeles County
Super. Ct. No. NA085358)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joan Comparet-Cassani, Judge. Affirmed.

Murray A. Rosenberg, 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, Assistant Attorney General, Scott A. Taryle and Russell A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Hector Ernest, Jr., of assault on a child causing death (count 2; Pen. Code, § 273ab), and of child abuse (count 3; Pen. Code, § 273a, subd. (a)).¹ The jury found him not guilty of murder (count 1; § 187, subd. (a)). Defendant was sentenced to a total of 31 years to life in state prison, based on a sentence of 25 years to life on count 2 and the consecutive upper term of six years on count 3.

Defendant contends on appeal that the evidence was insufficient to support his convictions and that the trial court erred in admitting evidence of defendant's statement to the police based on the court's finding of an implied waiver of defendant's *Miranda* rights.² We are not persuaded as to either contention and affirm the judgment.

FACTUAL BACKGROUND

I. Prosecution Evidence

Codefendant Cameo Green was the mother of the victim, Deandre Franks, Jr. (DJ), born on May 5, 2007.³ DJ's father was Deandre Franks, Sr., Green's longtime boyfriend. Green and DJ lived with Franks in an apartment in Long Beach until July 2009, when Green and DJ moved out. Green and Franks continued to have an intimate relationship until mid-September 2009, when Franks was arrested for inflicting domestic violence against Green.

Thereafter, Green continued to allow Franks to visit with DJ. Because of the conflict between Green and Franks, DJ would be dropped off and picked up from the

¹ All further statutory references are to the Penal Code.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

³ Defendant's trial was severed from codefendant Green's, and Green later pled guilty to felony child abuse and was sentenced to six years in prison. She testified on behalf of the People in defendant's trial. The prosecutor stated that Green's plea deal and the length of her sentence were not conditioned upon her testifying against defendant.

home of Green's grandmother so Green and Franks would not have to interact. Green never saw Franks physically abuse DJ. DJ never had any suspicious injuries and was a happy, normal child up until the time Green began having an intimate relationship with defendant (around September 2009).

From October 2009 through December 2009, defendant, Green, and DJ began living together at defendant's father's home in Hawthorne and at Green's apartment in Long Beach, spending most of their time at the Hawthorne home. In February 2010, the three of them moved to Green's Long Beach apartment.

Defendant became controlling of Green and began isolating her from her friends and family. Franks was not able to visit with DJ as often. Defendant began disciplining DJ and even though Green said he could only slap or "pop" the child with an open hand, defendant hit DJ on the buttocks with a belt, hit the child with his fist, and made him stand in a corner while holding a book or magazine over his head. Defendant said these methods were necessary to make up for what Franks failed to do in disciplining DJ. Green disciplined DJ only by slapping or "popping" the back of his hand or his buttocks, though Green acknowledged that once in February 2010 she hit DJ with a belt after he defecated on himself. DJ told Franks in November 2009 that his bottom was sore from his mother "whooping" him. Green and others said that during this time DJ went from being happy and energetic to being robotic and sad. Green did not report defendant's abuse of DJ to the police because she was afraid children's services would take DJ from her. She stayed with defendant because she was isolated and felt he was all she had.

In October 2009, at defendant's suggestion Green began toilet training DJ, although the child was less than two and one-half years old. During that month, defendant whipped DJ with a leather belt on his bare buttocks after DJ defecated in his bed. Green intervened to stop defendant but he told her not to confront him in front of DJ as it made him feel like less of a man. In January 2010, Green saw defendant whip DJ's bare buttocks with the same belt because DJ was not eating his food and defendant felt DJ was not obeying him. When Green intervened to stop the beating, defendant and

Green began arguing and defendant punched her in the face three times with a closed fist, asking her, “Do [you] think [I’m] a bitch?”

On December 12, 2009, Franks picked up DJ for an overnight visit. He saw four scars on DJ’s forehead which were caused by defendant using clippers to give DJ a haircut. Franks saw a bruise on DJ’s neck, which DJ said was caused by defendant grabbing him there. Franks took DJ to visit his cousin, Lavetta Jones. Franks and Jones observed that DJ’s upper lip was swollen and there was a cut underneath that lip. DJ said defendant had hit him in the lip.

Franks then went with DJ to the home Franks shared with his mother, Sharlynn Pickard. Pickard was bathing DJ the following day and noticed bruises on his stomach and back. DJ told Pickard and Franks that his butt hurt from getting a whooping. Pickard telephoned Jones and told her about the bruises and later took DJ to Jones’s home and showed her the bruises. Jones did not report this to anyone because she did not know who or what caused the bruises.

The following day, December 13, 2009, Franks tried to telephone Green but was unable to reach her. He took DJ to the Hawthorne Police Department to file a child abuse complaint against defendant, but did not do so. The receptionist told Franks that if defendant was arrested and it could not be proved that defendant inflicted the abuse, Franks could be arrested for filing a false report.

Franks took DJ to the home of Ayiesha Robinson, where Green would eventually come to pick up DJ. Robinson noticed the bruise on DJ’s neck, near his collarbone. Pickard telephoned Robinson and asked if she had seen the bruise. She confirmed she had, and looked at DJ’s torso at Pickard’s suggestion. Robinson saw numerous bruises on DJ’s stomach and chest, and along the sides of his torso. Robinson had taken care of DJ on numerous occasions and had never before seen such marks on him. Robinson took photographs of DJ’s injuries. Robinson spoke with Pickard later that day and asked what had happened. Pickard told Robinson that Green said DJ had fallen on a toy fire truck. Robinson accepted this explanation and did not report DJ’s injuries or show authorities the photographs she took until after the child’s death. Green explained at trial that her

story about the fire truck was not true. She lied to Pickard because she did not want children's services to take DJ away from her.

When Green picked DJ up from Robinson's home later that day, he cried and did not want to go with her. Robinson asked Green about the child's bruises and in order to cover for defendant Green said she had whooped him.

Defendant's friend Branden Key saw defendant, Green, and DJ at a Laundromat around February 24, 2010. Key noticed that DJ had a scar or mark on the side of his face running from the corner of his mouth up near his eye. Key had seen DJ several times before, either with defendant or with defendant and Green, and had not seen any marks on DJ on those prior occasions. Key did not comment on the scar to defendant or Green, but he later told his girlfriend, Britney Jones, the daughter of Franks's cousin Lavetta Jones. Britney Jones told her mother what Key had seen. Lavetta Jones reported the potential child abuse to the Department of Children and Family Services.

At the end of February 2010, Ashley Washington, a friend of Green's, babysat DJ. Washington saw that DJ had a black eye and scabs around his mouth extending down toward his chin. Green lied and told Washington that DJ had fallen in the shower and said he bit himself around the mouth when he was nervous.

David Medina, a social worker with the Los Angeles County Department of Children and Family Services (DCFS), went to the Hawthorne residence where Green and defendant had lived with defendant's father. He knocked on the door, but there was no response so he left his business card. Over the next three weeks, Medina returned to the Hawthorne residence and again left his card, sent a letter to Green at her Long Beach apartment, and visited the Long Beach apartment and left his business card when no one answered the door. Medina was never able to make contact with defendant, Green, or DJ.

Lieutenant Kenneth Swain of the Hawthorne Police Department was assigned on February 25, 2010, to investigate the report of suspected child abuse. Officer Michael Matson was also assigned to follow up on the report. Matson went to the Hawthorne residence on February 27, 2010, and spoke to defendant's father, Hector Ernest, Sr.

Defendant's father said he did not know where defendant, Green, and DJ were, and said the last time he saw DJ he did not see any marks or signs of abuse.

Officer Matson returned to the Hawthorne residence on March 1, 2010, and again spoke to defendant's father, who again denied knowing where defendant, Green, and DJ were located. He said he had seen DJ a week earlier and had not seen any signs of abuse. Officer Matson said he needed to see DJ and speak to defendant. He asked defendant's father to get a telephone number or address from defendant the next time he saw him so Officer Matson could contact defendant. Defendant never contacted Officer Matson, and Officer Matson did not return to the Hawthorne residence or contact defendant's father again. However, Lieutenant Swain went to the Hawthorne residence and spoke to defendant's father on March 6, 2010. He denied seeing defendant or DJ.

At that time, defendant and Green were living in her apartment in Long Beach. Defendant's father told them the police were looking for them, so Green moved all of her things out of the Hawthorne residence and into her apartment.

During March 2010, defendant's abuse of DJ increased, and he used a leather belt on the child more often. On March 12, 2010, Green went to an orientation session for a job she was starting. When she returned to the apartment she discovered that defendant had beaten DJ with the belt again. The buckle had broken off from the leather portion of the belt. DJ had new lash marks on his buttocks and sides. The following evening, March 13, 2010, Green left DJ in defendant's care while she spent the night out with her girlfriends, including Washington. She returned to her apartment around noon on March 14, 2010. While Green was away, defendant took DJ to visit Green's mother and stepfather, Paula and Keri Porter. Defendant and DJ spent the night of March 13 with the Porters, returning to the Long Beach apartment the following evening. The Porters noticed the first evening that DJ had a healing black eye and a lot of Vaseline on his face, and he also had a bruise on his chest in the shape of a handprint. He limped when he walked. Paula asked DJ what had happened and he responded, "Mommy hurt me." Paula asked defendant what happened to DJ and he responded that DJ had fallen at the park. Paula stated she hoped nobody was hurting her grandchild. Defendant said he

preferred hitting grown men rather than children. He claimed he let Green do the “chastising” of DJ, to which Paula responded that he had to be the man around the house. Defendant said in reply that Paula knew how Green was.

Paula telephoned Green and offered to have DJ stay with the Porters for a couple of weeks while Green started her new job. Green asked if defendant was with the Porters and asked to speak with him. Defendant and Green spoke, and when Paula got back on the phone, Green said DJ could not stay with them.

When defendant prepared to leave the Porters’ home, DJ did not want to leave with him. After they left, Paula Porter called the Department of Social Services hotline and the Long Beach Police Department to report DJ’s injuries and to request that they inquire into his welfare. On March 15 and 17, 2010, Long Beach police officers knocked on the door of the Long Beach apartment and tried to contact defendant, Green, and DJ. On both occasions no one answered the door.

Green started a new full-time job on March 15, 2010, and left DJ in defendant’s care. On March 19, 2010, the three of them were eating dinner together when defendant got angry at DJ for paying attention to the television instead of his food. Defendant went over to DJ and punched him twice in the chest with a closed fist, then told him to go lie down. DJ began crying. Green jumped up and confronted defendant, then took DJ into his room. Defendant and Green argued, and defendant told her not to tell him how to do things. He said what happened between him and DJ was between the two of them. Green saw a red circle on DJ’s chest the next day.

The following day, March 20, 2010, Green left to run errands for about two hours, leaving DJ in defendant’s care. While she was away she spoke to defendant on her cellular telephone. She returned home and saw that DJ and defendant were watching television in DJ’s room. Green then took a bath, and while doing so she heard defendant ask DJ if he wanted some juice. The boy said he did, so they went downstairs together then returned upstairs. Green heard a loud “whoomp” sound coming from the direction of DJ’s room. The noise shocked her so she wrapped a towel around herself and went into DJ’s room. Green asked defendant about the noise but he denied knowing what it

was. DJ appeared normal. As Green went to get dressed, she realized that she had seen a large package of frozen meat, which had been in the freezer downstairs, on the floor in front of DJ's dresser. She returned to DJ's room and asked defendant about the meat, and he responded that he was cleaning out the freezer. Green asked DJ to get up and walk toward her, and he did so and seemed normal.

Defendant left the room, and DJ told Green that defendant had hit him in the chest. Green saw two red marks on the child's chest. Thereafter, DJ began looking weak and lethargic. Green asked him if he was hungry and he said he was, so she brought him some grapes, bread, water, and soda. He ate, then Green laid him down on his bed to take a nap. At some point defendant had returned to the room; after DJ fell asleep, Green and defendant left and went into their bedroom.

Green later returned to DJ's room to check on him and found him convulsing on the floor. The food DJ had eaten was coming out of his nose and mouth. He was not breathing, and Green could not find a pulse. Green carried him into her bedroom and told defendant DJ was dead. Defendant said he was not dead and she should not say that. Green carried DJ into the bathroom and tried to clean out his mouth. As she did, DJ lost control of his bowels. Green attempted to dial 911 on her cellular telephone but it was not working.

Green put DJ into her car and defendant drove them to Long Beach Memorial Hospital. Green used defendant's cellular telephone to call 911 and was able to reach an operator. They arrived at the hospital and Green carried DJ from the car, then handed him to defendant, who carried him into the emergency room. Defendant handed DJ over to Marilyn Gatson, an emergency medical technician, saying that his child was not breathing. DJ was limp and cold, and indeed was not breathing.

Gatson called a "code white," referring to a pediatric full arrest. She and a nurse took DJ to a room and began performing CPR. DJ vomited blood and Gatson cleared his airway. Other hospital staff arrived and hooked DJ up to a heart monitor, but it showed no activity. Dr. Tamir Salib was the physician who responded to the room.

Gatson returned to the reception desk and asked Green what happened. Green said DJ had a cold for awhile and that he was coughing and stopped breathing. Gatson later saw Green and defendant and they appeared to be arguing. Green was crying and pacing back and forth, and was very distraught. Defendant tried to put his arm around her but she pushed him away saying, "Get the fuck off of me," adding "It's all your fault."

Gatson spoke with defendant at some point and asked him what happened. Defendant said they were at a restaurant and DJ started choking and then stopped breathing. Gatson asked why DJ arrived at the emergency room naked and wrapped in a towel. Defendant looked at her, then raised his hand and waved her off, then walked through the emergency room doors. Defendant went into the room where hospital staff was attempting to resuscitate DJ and asked if DJ was going to make it. Defendant stayed in the room for about 10 minutes, then left and exited the hospital.

Long Beach Police Officer Laurie Briney was patrolling the area around the hospital when she noticed defendant standing near the driver's side door of a car (which later turned out to be registered to defendant). He drew her attention because he was visibly upset. He slammed the car door, made punching gestures in the air, and was yelling obscenities. He began walking in the direction opposite the emergency room entrance, then sat down on the curb, and put his head in his hands, then got up and continued walking away. Just then Officer Briney received a radio call to respond to the emergency room. As she approached the hospital, Green and two hospital staff members met her. Green said defendant should be at her car in the parking lot but he was nowhere to be seen.

Officer Briney accompanied Green back into the hospital, and was with her when DJ was pronounced dead. Green was crying uncontrollably as Officer Briney interviewed her. Green said she was at home with DJ and he appeared to be sick and weak, so she gave him some grapes and later a banana and a soda. She told him to take a nap in the living room and went upstairs for a short time. She came back to check on him and found him vomiting banana out of his mouth and nose. She took him into the bathroom and turned him chest down, trying to clear the vomit out of his mouth. Green

and defendant then drove DJ to the hospital. On the way, Green checked DJ for a pulse but could not feel one.

During the interview, Franks arrived at the hospital lobby and began yelling; Officer Briney and Green were in a separate room but could hear him shouting out in the lobby. When Green realized it was Franks, she said to Briney that she had to tell the truth, that “[s]omething ha[d] been happening to [DJ].” She admitted that she had left DJ in defendant’s care when she started a new job on March 15, 2010. When she came home from work the first day she saw bruises on the child’s abdomen and chest. Green confronted defendant about the bruises and defendant said he had “whooped on [DJ], but it wasn’t that bad.” Green told him not to punch or hit her son anymore. However, as the week went on, she noticed more bruises on his torso and later on his face. Green said that she ignored it and pretended it was not happening.

Long Beach Police Detectives Gregory Krabbe and Mark McGuire were called to the hospital to investigate DJ’s death. They interviewed Green and remained at the hospital until almost midnight. Defendant did not return to the hospital after Officer Briney saw him walking away earlier in the afternoon. From the hospital, the detectives went to Green’s apartment in Long Beach. In the master bedroom they found a document with defendant’s name on it, a belt buckle, men’s shoes, and both men’s and women’s clothing in the closet. On the floor in the smaller bedroom they found a package of meat, grapes, a telephone book, and vomit. There was also vomit on the floor in the bathroom.

Dr. Raffi Djabourian, a deputy medical examiner with the Los Angeles County Coroner’s Office, performed an autopsy on DJ’s body on March 21, 2010. He found multiple blunt force injuries to the skin and scalp. He found scars and scabs from older wounds on one side of his mouth extending down to the chin, as well as on his shoulder, neck, and back. There was bruising on his face around the right eye and ear, on both sides of the chest, along the collarbone, and on the abdomen, back, and hips. Dr. Djabourian found a recent fracture of one of the child’s ribs, bruising on the diaphragm, an inch-long laceration of the liver that was less than 24 hours old, significant lacerations to the stomach cavity, and significant hemorrhaging in the stomach cavity and

around the kidneys. Dr. Djabourian opined based on these findings that the cause of DJ's death was blunt force trauma to the abdomen.

On March 21, 2010, defendant was arrested as he exited a Metro train. He was wearing multiple layers of clothing and had a visitor's badge from Long Beach Memorial Hospital in his pocket. Detectives Krabbe and McGuire interviewed defendant later that day, and recorded the conversation. Defendant denied any involvement in DJ's death. He denied having an intimate relationship with Green and denied living with her. He said he was homeless and that Green was merely a friend who let him keep some of his belongings at her apartment. He said he never babysat DJ or disciplined him in any way. Defendant said he had stayed at Green's parents' home only once, and that Green had also been there. He said he was not at Green's apartment on the date of DJ's death. He was at a park and received a call from Green asking him to take them to the hospital. Defendant said he drove them to the hospital and left before DJ was pronounced dead.

Detective Armando Yearwood interviewed defendant's father on April 2, 2010. Defendant's father said when defendant, Green, and DJ lived with him, he sometimes overheard DJ being beaten and he could tell a belt was being used. The beatings took place behind closed doors, usually with both Green and defendant present. Defendant's father told defendant that because DJ was not his child, defendant should not discipline the boy; that was his mother's responsibility.

Erin Ruffin was in a dating relationship with defendant for almost three years, beginning in 2006. She had two young sons, Jeremy, who was three years old, and Joshua, who was three months old. Dorothy Holmes, Ruffin's mother, also lived with Ruffin. Defendant often stayed with Ruffin and babysat the boys while Ruffin was at work. As the relationship progressed, defendant became very controlling of Ruffin. He frequently threatened to hurt her or kill her. At some point, Ruffin became pregnant with defendant's baby, but at 22 weeks gestation, she and defendant were arguing about the pregnancy and defendant pushed her hard, face first, against a van. She began bleeding later that day. She went to the hospital but told them she did not want them to save the baby because she did not want it.

On one occasion Holmes was in her bedroom and heard a whipping or slapping sound coming from the bathroom next to her room and then she heard Jeremy crying. She went into the bathroom and saw that Jeremy had no clothes on and defendant had a belt in his hand. Another time when Ruffin was at work, Holmes heard defendant whipping Jeremy in the bedroom defendant shared with Ruffin. On another occasion, while defendant and Ruffin were arguing Holmes saw defendant put Joshua in an infant car seat and place the car seat in the middle of a busy street. Holmes saw defendant hit Joshua numerous times while trying to potty train him.

In late 2007, Ruffin came home to find defendant spanking Jeremy on his bare bottom, and the child was screaming. Ruffin had not given defendant permission to discipline her children and confronted him. He got angry and began yelling and cussing and said that Jeremy needed “his fuckin’ ass whooped.” Holmes called her adult sons and told them to come to the apartment, but defendant left before they arrived. The relationship between Ruffin and defendant apparently ended around this time.

II. Defense Evidence

Defendant’s friend Alberta Keyes and her sister Ronny Andrews lived in the same Hawthorne apartment building as defendant from early 2008 through November 2009. They frequently saw defendant interact with Andrews’s three young children and observed that he was happy and playful with them. He never hit, spanked, or abused them. The children liked defendant and called him Uncle. Andrews’s mother, Kara Tolliver, also witnessed defendant’s interactions with the children. She said he babysat Andrews’s children and Tolliver’s other grandchildren often visited with him and were very close to him. He sometimes picked them up from school and helped them with homework. Tolliver observed him to be very good with children and never saw him strike or abuse a child. Tolliver called the police when she heard about this case to inform them of her observations of him around children.

Another friend of defendant’s, Hasahne Brown, often observed defendant interacting with Brown’s child and defendant’s nephew and never saw him abuse or

spank them. Similarly, Errol Kelly frequently saw defendant interacting with Kelly's son and defendant's nephew and thought he was great with children. He never saw defendant strike or abuse any child.

Laron Harbin was a grounds maintenance worker for the Los Angeles County Department of Parks and Recreation and supervised defendant when defendant performed community service work in a park. Harbin saw defendant and DJ spending time together on five occasions. Harbin said defendant treated DJ well and not only did DJ not appear afraid of defendant, the child seemed attached to him. He never saw defendant strike DJ and he saw no signs of abuse on DJ.

Phillip Kunde was staffing the DCFS hotline on February 25, 2010, and spoke to Lavetta Jones when she called to report the suspected abuse of DJ. She reported that DJ lived with his mother and defendant and that the mother had admitted to having caused the bruises on DJ. Jones said she had photographed DJ's bruises in December 2009.

Keeshawn Andrew was staffing the DCFS hotline on March 15, 2010, and received a call reporting that Green was abusing DJ. The caller saw bruises on DJ and the child said, "Mommy hurt me." The caller spoke to Green about the bruises; Green said DJ had fallen in the park.

Peter Brosnan, a social worker with DCFS, received a call on the hotline on March 20, 2010, from a hospital social worker reporting DJ's death. DJ's mother told the hospital social worker that DJ had appeared fine earlier in the day but later vomited up grapes.

DISCUSSION

I. Sufficiency of the Evidence

Defendant contends his convictions of assault on a child causing death (count 2) and child abuse (count 3) must be reversed for insufficient evidence. Defendant's argument is essentially that the jury should not have believed Green and the evidence of his past violence toward children in a prior relationship, calling such evidence "inherently

improbable.” We are not persuaded. The evidence of defendant’s guilt of counts 2 and 3 is compelling.

A. *Standard of Review*

“““The standard of review is well settled: On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, 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. [Citations.] “[I]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s credibility for that of the fact finder.” [Citation.] ‘The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] “Although it is the duty of the [finder of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [finder of fact], not the appellate court which must be convinced of the defendant’s guilt beyond a reasonable doubt.”” [Citation.]

“““An appellate court must accept logical inferences that the [finder of fact] might have drawn from the circumstantial evidence.” [Citation.] “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. Hamlin* (2009) 170 Cal.App.4th 1412, 1426.) “It is not enough for defendant to simply say ‘there was no evidence’; instead, ‘he must *affirmatively demonstrate* that the evidence is insufficient’ on the point in dispute. [Citation.] . . . The People do not bear the burden of showing the conviction is supported by substantial evidence; instead, because ‘we *must* begin with the presumption that the evidence . . . *was* sufficient,’ it is defendant, as the appellant, who ‘bears the burden of convincing us otherwise.’ [Citation.]” (*Id.* at p. 1430.)

B. Elements of the Crimes

The jury was instructed regarding the elements of a section 273ab violation (count 2) as follows: (1) a person had the care or custody of a child under eight years of age; (2) that person committed an assault upon the child; (3) the assault was committed by means of force that to a reasonable person would be likely to produce great bodily injury; and (4) the assault resulted in the death of the child. (See CALJIC No. 9.00.)

The jury was instructed that the elements of a violation of section 273a, subdivision (a) (count 3) include: (1) a person willfully inflicted unjustifiable physical pain or mental suffering on a child; and (2) the person's conduct occurred under circumstances likely to produce great bodily injury or death. (See CALJIC No. 9.37.)

Defendant does not contend that the evidence was insufficient to support a particular element of either crime, rather he asserts that the evidence was insufficient to prove that he was the perpetrator of the crimes.

C. Analysis

The crux of defendant's argument on appeal is that Green is a compulsive liar and her testimony that defendant was the perpetrator of the abuse was a transparent deception to cover up her own wrongdoing. He contends that it is inherently improbable that defendant acted in a controlling manner with Green and DJ when, for example, Green spent a night out partying with friends and took a full-time job, leaving DJ in defendant's care. Furthermore, Green admitted to several people that she had caused DJ's bruises and other injuries. All of the reports the authorities received indicated Green was the one abusing DJ.

However, we do not find Green's testimony inherently improbable. She admitted she told numerous lies, saying she was the one causing DJ's injuries, in order to shift the blame away from defendant and in the hope that DCFS would not remove DJ from her care. She explained that she felt defendant was all she had and that defendant caused her to become isolated from her family and friends. It is not unthinkable that defendant could be extremely controlling while at the same time also permit Green to socialize at times

and work in order to support the family. The jury was entitled to believe Green's testimony that she lied to cover up for defendant's abuse of DJ because she felt trapped and frightened that DJ would be taken away from her. She further explained that she was in utter denial about the severity of the situation and that during the last week of DJ's life she pretended the abuse was not happening. While this is not rational behavior on Green's part, it is not inherently improbable that a woman in her position and frame of mind would act the way she did.

As to defendant's characterization that Ruffin's testimony amounted to nothing more than her saying she witnessed one incident of spanking, this grossly misstates the record. While Ruffin witnessed one spanking incident, Holmes witnessed numerous occasions when defendant abused Ruffin's children. Defendant points out that Holmes did not like defendant, but that fact merely goes to her bias and the weight of her testimony. It was the jury's province to weigh the evidence and determine which testimony it believed.

In addition, there was other evidence that defendant was the perpetrator of the abuse in addition to Green's and Ruffin's testimony. DJ told Franks and Lavetta Jones that defendant had hurt him. Defendant's father told defendant that it was not his role to discipline Green's child, from which the jury could infer that defendant's father knew defendant was the one inflicting beatings on DJ with a belt. Defendant showed a consciousness of guilt by lying to the police about having a relationship with Green and DJ, by the way he behaved in the parking lot outside the hospital (as observed by Officer Briney), and by leaving the hospital and never returning.

In summary, Green's testimony was not inherently improbable and the jury was therefore permitted to rely on it. Her testimony alone was enough to support defendant's convictions. (*People v. Young* (2005) 34 Cal.4th 1149, 1181 ["[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction."].) In addition there was considerable corroborating evidence for the jury to consider. Taken as a whole, the evidence of defendant's guilt was substantial and we find no basis for reversing the judgment.

II. Implied Waiver of *Miranda* Rights

Defendant contends that the trial court committed reversible error in denying his motion to exclude evidence of the recorded statement he gave to Detectives Krabbe and McGuire. We find no error. Furthermore, even assuming the trial court erred, any such error was harmless beyond a reasonable doubt.

A. *Background*

Defendant objected to admission of evidence of his recorded statements to Detectives Krabbe and McGuire. Defense counsel argued “that the *Miranda* warnings weren’t completely given” because the detectives did not expressly ask defendant if he waived his *Miranda* rights.

Outside the jury’s presence, Detectives Krabbe and McGuire testified that they met with defendant around 1:00 p.m. on March 21, 2010, in an interview room at the police station. Detective McGuire introduced himself, and Detective Krabbe began by telling defendant the reason he had been arrested was because they needed to talk to him about DJ. Defendant said he had been arrested multiple times before for minor things. Detective McGuire asked if defendant had *Miranda* rights read to him before, such as “You have the right to remain silent,” and “Anything you say can and will be used against you in a court of law.” Defendant replied that he had.

The conversation continued as follows:

“[Detective McGuire]: Okay. Would you like to talk to me and my partner about Deandre Green and what happened to him?

“[Defendant]: Talk about him, like what do you mean?

“[Detective McGuire]: What happened to him, how he got sick?

“[Defendant]: I don’t know.

“[Detective McGuire]: Do you want to talk about — talk to us about it? Because we need to get your side of the story because you and his mom were — uh, he was in

your guys' care. We're trying to figure out what happened to him. Do you want to talk to us about it?

“[Defendant]: He wasn't in my care, but I mean, I don't want to —

“[Detective McGuire]: Do you want to talk to us about it?

“[Defendant]: No, because there's really nothing to talk about. I don't really know anything to talk about.

“[Detective McGuire]: You understand that he's dead, correct?

“[Defendant]: Yes, sir.

“[Detective McGuire]: Okay. And this is your — probably your last time that you're going to get to tell us whatever you know about how he became sick, how he became ill. You understand that?

“[Defendant]: Yeah, his mom said he was just, like, sick or he couldn't swallow, he couldn't breathe or something. That's all I know.

“[Detective McGuire]: Okay. I'm going to read you your rights, and then I want you to decide what you want to do because we really want to get your side of the story.

“[Defendant]: I mean, I mean my side of the story as far as what, though? Like, I'm not understanding what you mean.

“[Detective McGuire]: Let me read you your rights, okay? You understand that? Okay. Um, you have the right to remain silent.

“[Defendant]: Uh huh.

“[Detective McGuire]: Okay. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have them present with you while you're being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. You understand all that?

“[Defendant]: Yes.

“[Detective McGuire]: Okay. Um —

“[Defendant]: So why is, um — what do you mean, like, he was in my care? Like, I don't understand, like, like I don't understand that. Like —

“[Detective McGuire]: Well, you took, um — you and Cameo took him to the hospital yesterday, right?

“[Defendant]: Uh huh. Yes.

“[Detective McGuire]: Okay. And it is our understand[ing] that you, um, um, would watch him while she went to work or went to school or whatever she did during the day.

“[Defendant]: No.”

The interview proceeded, with defendant denying everything including having any involvement in DJ’s death, disciplining DJ, or having an intimate relationship with Green or living with her. At one point defendant said, “Like, I’m not no — I’m not trying to avoid no questions.” He did not ever indicate he wanted to stop the interview and he continued responding to the detectives’ questions, as well as asking questions of them.

B. Analysis

“The basic principles governing defendant’s claim are settled. ‘In reviewing defendant’s claim that his *Miranda* rights were violated, we must accept the trial court’s resolution of disputed facts and inferences, as well as its evaluation of the credibility of witnesses where supported by substantial evidence. [Citations.] *Miranda* makes clear that in order for defendant’s statements to be admissible against him, he must have knowingly and intelligently waived his rights to remain silent, and to the presence and assistance of counsel. [Citation.]’” (*People v. Saucedo-Contreras* (2012) 55 Cal.4th 203, 217 (*Saucedo-Contreras*), quoting *People v. Cruz* (2008) 44 Cal.4th 636, 667 (*Cruz*).)

“‘[A] suspect who desires to waive his *Miranda* rights and submit to interrogation by law enforcement authorities need not do so with any particular words or phrases. A valid waiver need not be of predetermined form, but instead must reflect that the suspect in fact knowingly and voluntarily waived the rights delineated in the *Miranda* decision. [Citation.] We have recognized that a valid waiver of *Miranda* rights may be express or implied. [Citations.] A suspect’s expressed willingness to answer questions after acknowledging an understanding of his or her *Miranda* rights has itself been held

sufficient to constitute an implied waiver of such rights. (*People v. Medina* (1995) 11 Cal.4th 694, 752; *People v. Sully* (1991) 53 Cal.3d 1195, 1233.)” (*Sauceda-Contreras, supra*, 55 Cal.4th at pp. 218-219, quoting *Cruz, supra*, 44 Cal.4th at pp. 667-668.)

“Ultimately, the question becomes whether the *Miranda* waiver is shown by a preponderance of the evidence to be voluntary, knowing and intelligent under the totality of the circumstances surrounding the interrogation. [Citations.] The waiver must be ‘voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception’ [citation], and knowing in the sense that it was ‘made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’ [Citation.]” (*Sauceda-Contreras, supra*, 55 Cal.4th at p. 219.)

In this case, looking at the totality of the colloquy, it is clear that a reasonable officer would believe that when defendant expressed a reluctance to talk, it was not because he was invoking his right to remain silent, but because he was saying he did not know anything about the case. Therefore, the officer had a right to inquire further. Defendant was accurately advised of his rights; indeed, he acknowledged he had been arrested several times before and received *Miranda* warnings. Having been advised of his rights, he impliedly waived them by immediately seeking to talk to the detectives when the formal advisement was done. Defendant expressed that he did not wish to avoid the officer’s questions and demonstrated a desire to talk to them in order to deny any involvement in DJ’s death. He implicitly waived his *Miranda* rights, and his waiver was voluntary, knowing, and intelligent under the totality of the circumstances surrounding the interrogation.

Finally, even if defendant’s statements were inadmissible, any resulting error was harmless beyond a reasonable doubt. The erroneous admission of even an involuntary or coerced statement is subject to the harmless-beyond-a-reasonable-doubt standard of *Chapman v. California* (1967) 386 U.S. 18, 24. Here, even if defendant’s recorded statement was not admitted into evidence, the evidence of his guilt of the charged crimes was substantial. Although his denial during the interrogation of any involvement with

DJ's death demonstrated a consciousness of guilt, there was other evidence establishing defendant's guilty state of mind, including his leaving the hospital and not returning, and his behavior in the parking lot outside the hospital. Green's testimony alone provided sufficient evidence of his guilt, and was accompanied by ample circumstantial evidence. Had his statement not been admitted, the verdict would undoubtedly have been the same.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.