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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.

BRITTANY ANN INGRASSI,

Defendant and Appellant.

B283049

(Los Angeles County
Super. Ct. No. MA068287)

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

Bartell, Hensel & Gressley, Donald J. Bartell and Lara J.
Gressley for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Senior Assistant
Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy
Attorney General and David F. Glassman, Deputy Attorney
General for Plaintiff and Respondent.

INTRODUCTION

Brittany Ann Ingrassi appeals from the judgment after a jury convicted her of second degree murder and related charges stemming from the death of a five-month-old infant entrusted to her care. She contends the trial court erred in (1) denying her request at sentencing to relieve her retained counsel and refusing to appoint a public defender, (2) denying her request for a continuance of the sentencing hearing to file a motion for new trial, (3) failing to properly instruct the jury on character evidence, and (4) denying probation under the mistaken assumption she was ineligible. Because none of Ingrassi's contentions has merit, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Aiden Lopez Dies While Ingrassi Is Babysitting Him, and Ingrassi Blames the Family Dog*

Jessica Torres and Cesar Lopez, the parents of five-month-old Aiden Lopez, left their apartment for work one morning and left Ingrassi to take care of their child. Ingrassi remained in the apartment with Aiden and Kirby, a 24-pound French bulldog. At 5:50 p.m., Joseph Carlos, who is Lopez's cousin and Ingrassi's fiancé, called Lopez and sent him a text message stating: "I just called [Ingrassi]. Her phone is acting up. She said Aiden isn't waking up and to tell [Torres] to come home as fast as she can." Lopez tried calling Ingrassi several times, and when she finally answered the phone, she told Lopez that Aiden "wasn't breathing" and "wasn't waking up." Lopez told Ingrassi to call 911, but Ingrassi said her phone was not working. Lopez immediately left work and spoke numerous times with Torres on his way home.

At 6:00 p.m. Torres returned home from work to find Ingrassi at the top of the stairs to the apartment, shouting at her to hurry because Aiden was not moving or breathing. Torres ran up the stairs, took Aiden from Ingrassi, and noticed he was “limp.” Torres yelled at Ingrassi to call 911, but Ingrassi stated her phone was not working. Torres called 911 on her phone. Torres observed there was a scratch above Aiden’s eye, his skin was cold, and his arm was swollen.

When the paramedics arrived a few minutes later, Aiden’s breathing was “very weak and shallow.” Aiden had a few scratches on his face, bruising all over his head, arms, and legs, and his right arm was deformed, indicating he had broken bones. Aiden did not have any puncture wounds or heavy bleeding related to any of the scratches, but he displayed “posturing” or involuntary muscle spasms associated with a head trauma injury. Ingrassi told sheriff’s deputies she left Aiden on the baby mat while she used the restroom. She said she heard Aiden cry, and when she came out of the restroom, she saw Kirby next to Aiden. Ingrassi repeatedly screamed, without the officers asking her any questions, “The dog did it!” Four days later, Aiden died.

B. *Law Enforcement Investigates Aiden’s Death, and the People Charge Ingrassi*

Ingrassi gave conflicting accounts to the detectives of what happened to Aiden. Ingrassi initially claimed Kirby must have jumped on Aiden. Later, Ingrassi said she may have “fumbled” and fallen while holding Aiden, she may have picked up Aiden “too hard,” or Aiden may have hit his head on the door. Ingrassi’s blood alcohol content six hours after her arrest was .10 percent. Based on Ingrassi’s body weight, a criminologist called by the prosecution who performed a forensic alcohol analysis estimated that, at the time emergency responders came to the apartment,

Ingrassi's blood alcohol content was between .102 and .22 percent.

Detectives found Aiden's blood on Ingrassi's clothing and a long-sleeved onesie Aiden wore that day, but his clothing did not have any puncture holes that Kirby would have left had Kirby attacked Aiden. The blood stains on Aiden's clothing appeared only on the exterior of the fabric.

Detectives also found Aiden's blood on the underside of a rug in the apartment, suggesting Ingrassi had turned it over, and on a paper towel recovered from the kitchen trashcan "under layers of trash." Aiden did not have any blood on his body when medical staff examined him at the hospital, but Aiden's blood was on the bathroom door, the bathroom floor, and the washer and dryer in the apartment, which suggested Ingrassi had washed Aiden to remove all the blood after he was injured. Two baby wash cloths and a crib sheet with blood stains had been laundered before the paramedics arrived.

An animal control officer and county veterinarian examined Kirby and did not find any evidence of Aiden's blood on the dog. Kirby did not exhibit any aggressive tendencies and was "compliant" and "quiet."

Medical personnel who examined Aiden told the detectives Aiden's injuries were inconsistent with a dog attack. The paramedics who treated Aiden told detectives that Aiden's injuries occurred at least an hour before they arrived and that, based on their observation of Kirby, Kirby could not have inflicted the injuries.

The People charged Ingrassi with assaulting a child by means reasonably likely to produce great bodily injury resulting in the child becoming comatose due to brain injury or suffering

paralysis (Pen. Code, § 273ab, subd. (b)),¹ child abuse (§ 273a, subd. (a)), murder (§ 187, subd. (a)), and assaulting a child by means likely to produce great bodily injury resulting in the child's death (§ 273ab, subd. (a)). The People also alleged Ingrassi personally inflicted great bodily injury on Aiden within the meaning of section 12022.7, subdivision (d).

C. *The Jury Convicts Ingrassi*

In addition to the forensic evidence, the People presented medical evidence Ingrassi, and not Kirby, caused Aiden's injuries. An emergency medical technician testified "there [was] no medical way" Kirby attacked Aiden because Aiden did not have any bite marks and Kirby was not large enough to inflict the injuries Aiden sustained. The technician testified that, even though Ingrassi told her the injuries occurred "just minutes" before Ingrassi came out of the bathroom, Aiden's injuries must have occurred "long before" the technician arrived because Aiden's bruises had already "set in" and were visible.

The pediatric intensive care unit physician testified Aiden suffered two fractures to his skull that a dog could not have caused because a dog would not have been able to inflict a skull fracture without deep tissue laceration. The physician also explained Aiden suffered a "complete break" in the middle of his right humerus that could have only been caused by "human manipulation." The physician testified Aiden's face may have hit a linear object that produced bruising in a "linear pattern," which was consistent with the side of Aiden's face hitting the edge of a door or the edge of the top of a crib. Aiden's eyes had extensive retinal damage, which was "a cardinal sign . . . to solidify [the] suspicion of child abuse."

¹ Undesignated statutory references are to the Penal Code.

The physician in the intensive care unit testified Aiden's injuries occurred much earlier than Ingrassi claimed because the CT scan showed substantial swelling of the brain, which takes several hours to develop. The physician explained that Aiden's temperature was "very low for what it should be if [his injuries] had just occurred" and that such a drop in temperature indicated Aiden's brain had ceased regulating his body temperature hours before he arrived in the emergency room. The physician stated he was 100 percent certain a human being inflicted Aiden's injuries.

The coroner concluded that it was "impossible that the break [in Aiden's arm] was due to a dog attack" and that Kirby could not have gotten her mouth around Aiden's skull to compress it and cause the two fractures. The coroner also stated that "impact with some sort of an object that had a flat edge" caused the linear bruise on Aiden's face. The coroner testified Kirby could not have swung Aiden with enough force to cause the fractures he observed. The coroner determined a "blunt-force head trauma" caused Aiden's death.

The People also presented evidence that, shortly before Torres arrived home, Ingrassi deleted all the records on her cell phone. Data extracted from Carlos's phone, however, pointed to Ingrassi's guilt. On the evening the police arrested Ingrassi, Carlos conducted an internet search on his telephone for Sudden Infant Death Syndrome. Carlos's internet research later that night and into the early morning sought information about how babies can sustain bruises, causes of skull fractures, the liability of caregivers for a child's injury, and "willful harm or injury to a child." Text messages from Ingrassi to Carlos revealed that she felt Lopez and Torres were "tak[ing] advantage" of her, that she had been searching for another job so she could quit caring for Aiden, and that Aiden's constant crying and need to be held

frustrated her. Text messages from Carlos to Ingrassi also indicated Ingrassi had a drinking problem and could lose her temper when intoxicated.

Ingrassi called several witnesses in her defense, including a dog expert who testified Kirby inflicted the injuries on Aiden because the dog's paw prints and teeth impressions matched the bruises on Aiden's body. A forensic pathologist explained the medical basis of the dog expert's conclusions and stated he believed Kirby grabbed Aiden by the arm and threw him back and forth, playing with him like one of the dog's toys. Ingrassi's sisters testified Ingrassi frequently looked after the children in the family, loved to be around children, and was kind and caring. Carlos also testified about Ingrassi's good character.

The jury found Ingrassi guilty on all charges. The jury also found true the special allegation under section 12022.7, subdivision (d), that Ingrassi inflicted great bodily injury.

D. *The Trial Court Sentences Ingrassi*

At the sentencing hearing, counsel for Ingrassi, Nancy Mazza, advised the court Ingrassi wanted to fire her and file a motion for a new trial "on her own." When the court asked whether substitute counsel was "ready to go," Mazza stated she was told Ingrassi had retained an appellate attorney, but no attorney had contacted her. Ingrassi interrupted Mazza and stated, "I want to file a *Marsden* motion, please."² The court told

² A *Marsden* motion allows a criminal defendant to seek substitution of court-appointed counsel if the record shows that "appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result." (*People v. Zendejas* (2016) 247 Cal.App.4th 1098, 1108.)

Mazza to continue. Mazza again stated that Ingrassi wanted to “proceed on her own with a motion for a new trial.” She also informed the court that she had explained to Ingrassi “the problems with” representing herself and that a motion for new trial was not a good idea “for further appellate issues.” The court stated, “Number one, no 1050 that has been filed, no motion for a continuance. Number two, there is no *Marsden* motion available. Ms. Mazza was privately retained.” The court asked Mazza whether Ingrassi wanted to represent herself. The following exchange occurred:

“Ms. Mazza: This morning I was told, a half hour ago, she was firing me; [Ingrassi said,] ‘This is extremely unfair’; she is not going to stand for it, and she’s firing me and going to do a motion for new trial on her own.

“The Court: Okay. The court is not relieving Ms. Mazza as counsel. Ms. Mazza conducted the trial. There was no 1050 filed. We’re here for the day of sentencing. There are multiple victim impact statements that are going to be heard by the court, and today is the day of sentencing. I need to clarify whether Ms. Ingrassi is requesting to represent herself going forward. Is that the request?

“[Ingrassi]: No. I want a public defender. I want—I’m requesting a public defender, please.

“The Court: The court is not relieving Ms. Mazza as counsel of record. There was no continuance motion that was filed, and today is the day of sentencing.”

The court again asked Ingrassi whether she was asking to represent herself because Mazza had stated that Ingrassi wished to file a motion for new trial “on her own.” Ingrassi stated, “No.”

The trial court gave Ingrassi an opportunity to address the court “on the issue of sentencing,” but Ingrassi directed her comments to the issue of representation: “I wasn’t sure if I could

file a *Marsden* motion. We contacted Ms. Mazza multiple times.” After the court directed Ingrassi to focus her remarks on sentencing, Ingrassi stated, “I would like to speak with you. I feel that this whole entire situation has not been done properly. I had very ineffective assistance of counsel.” The court again admonished Ingrassi to address only the issue of sentencing. Ingrassi stated, “I . . . honestly don’t understand how an innocent human being can be charged with a crime I didn’t commit. I don’t believe I deserve any of these charges, this harsh punishment. I don’t feel there should be anything. I did nothing at all. I am not responsible for any of Aiden’s injuries whatsoever. I know in my heart, the Lord knows, and Aiden knows that I did not do this.”

The trial court stated there was a “full audience” in the courtroom for the sentencing hearing. Ten people, including Aiden’s parents and a 10-year-old child, gave statements of how Aiden’s death had impacted them. Finding Ingrassi “ineligible for probation,” the trial court sentenced her on her conviction for assault on a child causing death to a prison term of 25 years to life. The court imposed and stayed under section 654 execution of the sentences on her remaining convictions (15 years to life for second degree murder, the upper term of six years for child abuse, and life with a minimum parole eligibility of seven years for assault on a child reasonably likely to produce great bodily injury resulting in a coma or paralysis). The court also imposed and stayed under section 654 the upper term of six years imprisonment for the true finding on the allegation under section 12022.7, subdivision (d). Ingrassi timely appealed.

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Denying Ingrassi's Request To Replace Her Trial Counsel*

1. *Applicable Law and Standard of Review*

“In order to ensure effective assistance of counsel, a nonindigent defendant is accorded the right to discharge his retained attorney.” (*People v. Ortiz* (1990) 51 Cal.3d 975, 983 (*Ortiz*); see *People v. Verdugo* (2010) 50 Cal.4th 263, 311; *People v. Lopez* (2018) 22 Cal.App.5th 40, 46 (*Lopez*).) “The right to discharge a retained attorney is, however, not absolute. [Citation.] The trial court has discretion to “deny such a motion if discharge will result in ‘significant prejudice’ to the defendant [citation], or if it is not timely, i.e., if it will result in ‘disruption of the orderly processes of justice.’”” (*People v. O'Malley* (2016) 62 Cal.4th 944, 1004; see *Verdugo*, at p. 311 [“a trial court has ‘wide latitude in balancing the right to counsel of choice against the needs of fairness’ and ‘against the demands of its calendar’”].) “The trial court, however, must exercise its discretion reasonably: ‘a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality.’” (*Ortiz*, at p. 984; accord, *Lopez*, at p. 47.) “In evaluating whether a motion to discharge retained counsel is ‘timely, i.e., if it will result in “disruption of the orderly processes of justice” [citation], the trial court considers the totality of the circumstances.” (*People v. Maciel* (2013) 57 Cal.4th 482, 513.) “We review a trial court’s denial of a request to discharge retained counsel for an abuse of discretion.” (*Lopez*, at p. 47; see *Verdugo*, at p. 311.)

2. *Substitution of Ingrassi’s Counsel at Sentencing
Would Have Interfered with the Orderly
Processes of Justice*

The trial court did not abuse its discretion in implicitly finding that allowing Ingrassi to discharge her retained counsel would have interfered with the orderly processes of justice. (See *People v. Dowdell* (2014) 227 Cal.App.4th 1388, 1412 [trial court did not abuse its discretion in denying the defendant’s request to discharge retained counsel because it impliedly found that granting a continuance long enough to retain new counsel could cause an unreasonable disruption from the loss of too many jurors]; cf. *Lopez, supra*, 22 Cal.App.5th at p. 50 [record did not support an implied finding that allowing the defendant to discharge his retained counsel would disrupt the orderly processes of justice].) Relieving Mazza would have caused an indefinite delay in sentencing because Ingrassi had not retained an attorney to substitute into the case for Mazza and because Ingrassi made it clear that she did not want to represent herself. (See *People v. Maciel, supra*, 57 Cal.4th at pp. 512-513 [trial court did not abuse its discretion in denying the defendant’s motion to discharge counsel because the defendant had not identified substitute counsel and had asked the court to appoint counsel].) And even if Ingrassi qualified for the services of the public defender,³ a new deputy public defender would need substantial time to prepare for a continued sentencing hearing. The trial,

³ Nothing in the record suggests Ingrassi would have qualified for the services of the public defender. Ingrassi retained private counsel throughout the trial, and her family hired private appellate counsel. (See Gov. Code, § 27706, subd. (a) [“the public defender shall defend . . . any person who is not financially able to employ counsel and who is charged with the commission of any . . . offense triable in the superior courts”].)

which the court characterized as a “long cause trial,” consumed 12 days of testimony involving 25 witnesses, including several experts, and more than 100 exhibits, including an audio recording of Ingrassi’s two-hour interview with detectives and multiple pages of text messages between Ingrassi and Carlos.

Moreover, there were 10 witnesses at the sentencing hearing waiting to present victim impact statements. The court recognized it was going to be a difficult proceeding for the victim’s family, friends, and other people in the audience and the court stated the sentencing hearing was going to be “emotional for a lot of people.” It was in this context, with a courtroom full of grieving people who undoubtedly needed closure to this tragic episode, that Ingrassi asked the court to relieve her trial counsel and appoint a public defender, which would have necessitated continuing the sentencing hearing, sending everyone in the courtroom home, and requiring already distraught witnesses to return another day to revisit Aiden’s death and its impact on their lives. The trial court did not abuse its discretion in implicitly finding that this significant delay and disruption of many lives would interfere with the orderly processes of justice. (See *People v. Maciel*, *supra*, 57 Cal.4th at pp. 512-513 [trial court properly considered the “significant delays” necessitated by allowing the defendant to discharge retained counsel where the case had been pending for two years, the trial “was imminent,” and new counsel would have had to review the records of a codefendant’s trial]; *People v. Keshishian* (2008) 162 Cal.App.4th 425, 429 [trial court was “within its discretion to deny a last-minute motion for continuance to secure new counsel” because “[a]n indefinite continuance would have been necessary,” where the defendant “had neither identified nor retained new counsel” and “[w]itnesses whose appearances had already been scheduled would have been further inconvenienced by an indefinite delay”];

cf. *Lopez, supra*, 22 Cal.App.5th at p. 50 [trial court abused its discretion in denying the defendant’s request to discharge retained counsel because the charges were “relatively straightforward, and there [was] no indication that it ‘would have taken an inordinate amount of time’ for new counsel to come up to speed”]; *People v. Munoz* (2006) 138 Cal.App.4th 860, 870 [preparing the record for review by a new attorney would not have taken “an inordinate amount of time” because the trial lasted only two days and the case “was not particularly complicated”].)

Ingrassi asserts she exercised her right to relieve Mazza “at the first available opportunity—on the first day of sentencing.” The record does not support this assertion. Ingrassi knew she wanted to replace Mazza well before the sentencing hearing because she admittedly had contacted Mazza “multiple times” about making a *Marsden* motion. “A continuance [for purposes of obtaining new counsel] may be denied if the accused is ‘unjustifiably dilatory’ in obtaining counsel, or ‘if he [or she] arbitrarily chooses to substitute counsel at the time of trial.’” (*People v. Courts* (1985) 37 Cal.3d 784, 790-791; see *People v. Dowdell, supra*, 227 Cal.App.4th at p. 1411.) The trial court did not abuse its discretion in denying Ingrassi’s request to relieve her retained counsel.

B. *The Trial Court Did Not Abuse Its Discretion in Proceeding with Sentencing*

Ingrassi contends the trial court “effectively denied [her] right to make a motion for new trial” when the court denied her “request” for a continuance without a hearing. The trial court did not abuse its discretion in sentencing Ingrassi without continuing the hearing.

Section 1050, subdivision (b), provides that a party may make a motion “[t]o continue any hearing in a criminal proceeding” by showing “that a continuance is necessary.” The statute prescribes several procedural requirements, including that the party seeking a continuance file and serve written notice at least two days prior to “the hearing sought to be continued.” (§ 1050, subd. (b).) “When a party makes a motion for a continuance without complying” with section 1050, subdivision (b), the court must hold a hearing to consider whether there is good cause for failing to comply with the statute and, if there is, whether there is good cause for a continuance. (§ 1050, subs. (c), (d).) “A trial court has broad discretion to grant or deny continuances.” (*People v. Mora and Rangel* (2018) 5 Cal.5th 442, 508; see *People v. Fuiava* (2012) 53 Cal.4th 622, 650 [“the decision whether or not to grant a continuance of a matter rests within the sound discretion of the trial court”]); *People v. Jacobs* (2007) 156 Cal.App.4th 728, 735 [same standard applies to motions to continue a sentencing hearing].

After the jury returned its guilty verdicts, the trial court told the parties, “If you need more time [for the sentencing hearing], you can file a 1050.” The court also stated, “If you need to file a 1050, make sure you give proper notice.” The court added, “If the lawyers plan on going forward with sentencing and do not or are not requesting more time, I expect sentencing memorandums.”

At the sentencing hearing, Ingrassi told the court she wanted a new attorney. Mazza stated that Ingrassi wanted to file a motion for a new trial “on her own” and that new counsel had not contacted Mazza to substitute into the case or to file a motion to continue the sentencing hearing. Mazza told the court she had filed a sentencing memorandum and was “ready for sentencing.” The court stated, “No 1050 that has been filed, no

motion for a continuance.” Ingrassi continued her demands for new counsel, and the court again stated, “There was no continuance motion that was filed.”

The trial court did not abuse its discretion in proceeding with the sentencing hearing. While Ingrassi repeatedly stated she wanted a new attorney, she never asked for a continuance. Nor did Mazza. To the contrary, Mazza stated she was ready to proceed with sentencing. There was no motion to continue the hearing, either written or oral, even though the court had explained at the end of the trial the procedure to request a continuance under section 1050. The trial court did not err in failing to rule on a motion Ingrassi did not make. (See *People v. Beames* (2007) 40 Cal.4th 907, 923 [“a trial court generally is under no obligation to continue a matter for the defense in the absence of a request”].)

C. *The Trial Court Did Not Err in Instructing the Jury on Character Evidence*

Ingrassi argues the trial court failed to give the correct jury instructions on character evidence because the court instructed the jury it heard evidence about Ingrassi’s *reputation* for being a caring and nonviolent person, when in fact it only heard *opinion* evidence from Ingrassi’s sisters and fiancé to show she was caring and nonviolent. Ingrassi contends the jury “may have rightfully given the evidence [it heard] no weight because the instruction stated it was the evidence of *reputation in the community* that could have established reasonable doubt.” Ingrassi’s arguments, however, are based on a misreading of the court’s instruction on character evidence, and any error in the instruction was harmless.

1. *Relevant Proceedings*

Ingrassi's sisters, Tiffany Lopez and Tera Ingrassi,⁴ testified about Ingrassi's character. Counsel for Ingrassi asked Tiffany, "What is [Ingrassi's] character, as far as you know, within the family and community, if you can describe her demeanor and the type of person she is?" Tiffany answered, "She is a loving, caring, kind, gentle person." Tiffany also testified, "It's heartbreaking to believe that they would think that she would do this. That is not her character. That is way out of her character." Tiffany testified she based her opinion of Ingrassi's good character on her personal observations.

Counsel for Ingrassi asked Tera about Ingrassi's "character within the community, her reputation," and Tera answered, "She is a very kind, loving, compassionate, caring person, willing to do anything that . . . she can for anybody She's very loving." Tera also testified about Ingrassi's babysitting skills based on Tera's observations of Ingrassi caring for Tera's children.

Counsel for Ingrassi also asked Carlos about Ingrassi's character: "What is [Ingrassi's] character known within the family and in the community as far as being a nonviolent person that wouldn't cause any harm to anybody, especially children?" Carlos testified, "With her family, being the youngest of three sisters, I would always consider [Ingrassi] the glue of the family." Carlos stated, "[Ingrassi] would always try to bring us all together and have these family moments together."

The trial court instructed the jury pursuant to CALCRIM No. 350: "You have heard character testimony that the defendant has a good reputation for being a caring and

⁴ We refer to Tiffany Lopez and Tera Ingrassi by their first names for clarity because each sister shares the last name of another person we have already discussed in the opinion.

nonviolent person in the community where she lives. Evidence of the defendant's character for being caring and nonviolent can create reasonable doubt as to whether the defendant committed the crimes charged. However, evidence of the defendant's good character may be countered by evidence of her bad character for the same trait. You must decide the meaning and importance of the character evidence. You may take that testimony into consideration along with all the other evidence in deciding whether the People have proved that the defendant is guilty beyond a reasonable doubt."

2. *Applicable Law and Standard of Review*

"[I]n criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case." (*People v. Diaz* (2015) 60 Cal.4th 1176, 1189; accord, *People v. Dearborne* (2019) 34 Cal.App.5th 250, 260.)

The trial court "need not instruct on specific points or special theories which might be applicable to a particular case, absent a request for such an instruction." [Citations.] Alternatively expressed, "[i]f an instruction relates "particular facts to the elements of the offense charged," it is a pinpoint instruction and the court does not have a sua sponte duty to instruct." (*People v. Garvin* (2003) 110 Cal.App.4th 484, 488-489; see *People v. Rogers* (2006) 39 Cal.4th 826, 878 [pinpoint instructions "relate particular facts to a legal issue in the case or "pinpoint" the crux of a defendant's case . . . but they are not required to be given sua sponte"]; *People v. Hernandez* (2010) 183

Cal.App.4th 1327, 1331 (*Hernandez*) [the trial court “has no duty to give clarifying or amplifying instructions absent a request”].)

“In reviewing a claim that the court’s instructions were incorrect or misleading, we inquire whether there is a reasonable likelihood the jury understood the instructions as asserted by the defendant. [Citation.] We consider the instructions as a whole and assume the jurors are intelligent persons capable of understanding and correlating all the instructions” (*Hernandez, supra*, 183 Cal.App.4th at p. 1332; see *People v. Guillen* (2014) 227 Cal.App.4th 934, 1016 [“We presume jurors are intelligent people ““capable of understanding instructions and applying them to the facts of the case.”””].)

3. *Ingrassi Has Not Demonstrated Prejudicial Error*

Ingrassi has forfeited her argument the court erred in instructing on character evidence because she did not request the specific language she now argues the court should have given. Ingrassi has not cited any authority supporting her contention the trial court had a sua sponte duty to give a detailed instruction distinguishing the two forms of character evidence the jury heard, opinion and reputation. Indeed, the bench notes to CALCRIM No. 350 provide “[t]he court has no sua sponte duty to give an instruction on defendant’s character; however, it must be given on request.” If Ingrassi wanted a more specific instruction, she should have requested it. But because Ingrassi neither requested the language she now argues the court should have included in the instruction on character evidence nor objected to the instruction the court gave, she has forfeited this argument of instructional error. (See *People v. Jones* (2013) 57 Cal.4th 899, 969 [“a party may not complain on appeal that an instruction correct in law and responsive to the evidence was too

general or incomplete unless the party has requested appropriate clarifying or amplifying language”]; *People v. Valdez* (2004) 32 Cal.4th 73, 113 [failure to either object to a proposed instruction or request that the court give omitted language to the jury forfeits an instructional challenge on appeal].)

Ingrassi’s argument also fails on the merits. Ingrassi argues the court’s instruction was erroneous because none of the witnesses she called testified about her reputation in the community. To the contrary, the character witnesses Ingrassi called were questioned on, and testified about, Ingrassi’s reputation. Counsel for Ingrassi asked Tiffany and Carlos about Ingrassi’s “character within the family and in the community” and asked Tera about Ingrassi’s “reputation.” All three witnesses answered the question with descriptions of character traits such as “kind,” “caring,” “loving,” and the family “glue.”

Ingrassi also argues the trial court failed to instruct the jury how to evaluate the witnesses’ opinions of Ingrassi’s good character. The court’s instruction on character evidence, however, encompassed opinion evidence. The instruction informed the jury that “evidence of [Ingrassi’s] character for being caring and nonviolent can create reasonable doubt as to whether [she] committed the crimes charged.” Because the jury heard character evidence both in the form of opinion and reputation, the jury could reasonably conclude that both forms of character evidence could create reasonable doubt. In addition, the court instructed the jury to “consider all the evidence that was received throughout the entire trial.” Thus, the jury instructions, considered as a whole, properly guided the jury on how to consider the character evidence the jury heard. (See *Hernandez, supra*, 183 Cal.App.4th at p. 1332 [“We consider the instructions as a whole and assume the jurors are intelligent

persons capable of understanding and correlating all the instructions.”].)

Finally, any error in the trial court’s character evidence instruction, whether in giving an instruction that did not apply or in failing to give a pinpoint instruction, was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*). (See *People v. Rivera* (2019) 7 Cal.5th 306, 329; *People v. Larsen* (2012) 205 Cal.App.4th 810, 830.) The evidence Ingrassi inflicted the fatal injuries on Aiden was overwhelming. Even if the trial court had referred to opinion evidence rather than reputation evidence when discussing Ingrassi’s character evidence, there is no reasonable probability the outcome of the trial would have been any different.

In a related argument, Ingrassi contends the trial court compounded its instructional error when the court instructed the jury pursuant to CALCRIM No. 351 as follows: “The attorney for the People was allowed to ask the defendant’s character witnesses if they had heard that the defendant had engaged in certain conduct. These ‘have you heard’ questions and answers are not evidence that the defendant engaged in any such conduct. You may consider those questions and answers only to evaluate the meanings and importance of the character witness’s testimony.” Ingrassi argues that, contrary to the court’s instruction “the cross-examination by the prosecution of the character witnesses did not include *any* ‘have you heard’ questions,” but instead “included the phrase ‘would your opinion change.’”

Like the instruction on character evidence, any error in this instruction was harmless. The trial court instructed the jury that “nothing that the attorneys say is evidence” and that “their questions are not evidence.” As discussed, we presume the jury understood and correlated all the instructions as a whole. (See

Hernandez, supra, 183 Cal.App.4th at p. 1332.) The trial court also instructed the jurors some of the instructions “may not apply, depending on your findings about the facts of the case. After you have decided what the facts are, follow the instructions that do apply to the facts as you find them.” Because the prosecutor did not ask the character witnesses any questions in the form of “have you heard,” we can presume the jury simply disregarded this instruction. (See *People v. Rowland* (1992) 4 Cal.4th 238, 282 [“the jurors . . . must have understood the instruction in accordance with the common meaning of its plain words, judged [the instruction] to be mere surplusage, and passed over it without further thought”].) Finally, given the overwhelming evidence of Ingrassi’s guilt, there is no probability of a different outcome had the trial court revised the instruction to correspond precisely to the words of the prosecutor’s questions. (See *People v. Debose* (2014) 59 Cal.4th 177, 205-206.)

D. *The Trial Court Properly Denied Probation*

Ingrassi contends her “convictions should be reversed” because the trial court erroneously determined she was “ineligible for probation.” Ingrassi argues section 273ab, subdivision (b), the offense the trial court selected as the base term for sentencing, does not require the jury to find she willfully inflicted great bodily injury, and because the jury did not make that finding, the trial court erred in concluding she was ineligible for probation under section 1203, subdivision (e)(3). Ingrassi misapprehends the law and the record.

1. *Relevant Proceedings*

The probation report summarized the facts of the case and included a statement from Torres, Aiden’s mother, that she “was devastated by the incident and it was a life-changing incident for

the worse.” Torres stated she “would also like to see [Ingrassi] be sentenced to state prison for life.” The probation report also stated Ingrassi was ineligible for a grant of probation pursuant to sections 1203.75 and 1203, subdivision (e)(3), and listed two circumstances in aggravation and one circumstance in mitigation. At the sentencing hearing, after receiving the victim impact statements, the trial court stated, “The court has read and considered the probation report in this case as well as the sentencing memorandums filed on behalf of the People . . . as well as . . . on behalf of . . . [Ingrassi]. The defendant is ineligible for probation.” The court proceeded to sentence Ingrassi on each count.

2. *Standard of Review*

“The decision whether to grant or deny probation is reviewed under the abuse of discretion standard. [Citations.] ‘An order denying probation will not be reversed in the absence of a clear abuse of discretion. [Citation.] In reviewing the matter on appeal, a trial court is presumed to have acted to achieve legitimate sentencing objectives in the absence of a clear showing the sentencing decision was irrational or arbitrary.’” (*People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1091; see *People v. Nuno* (2018) 26 Cal.App.5th 43, 49 “[t]o establish abuse, the defendant bears the burden on appeal to show that the denial of probation was, under the circumstances, arbitrary, capricious, or exceeding the bounds of reason”].)

“Generally, when the record shows that the trial court proceeded with sentencing on the erroneous assumption it lacked discretion, remand is necessary so that the trial court may have the opportunity to exercise its sentencing discretion at a new sentencing hearing.” (*People v. Dearborne, supra*, 34 Cal.App.5th at pp. 266-267.) “We need not remand, however, when the record

indicates the court was aware of its discretion or the record is merely silent on whether the court misunderstood its sentencing discretion.” (*People v. Bolian* (2014) 213 Cal.App.4th 1415, 1421; see *People v. Lee* (2017) 16 Cal.App.5th 861, 867 [“if the record is silent” on the court’s awareness of its discretionary authority in sentencing, “the defendant has failed to sustain his [or her] burden of proving error, and we affirm”]; *People v. Gutierrez* (2009) 174 Cal.App.4th 515, 527 [“[I]n light of the presumption on a silent record that the trial court is aware of the applicable law, including statutory discretion at sentencing, [the reviewing court] cannot presume error where the record does not establish on its face that the trial court misunderstood the scope of [its] discretion.”].)

3. *Ingrassi Has Not Shown Prejudicial Error*

Ingrassi argues section 1203, subdivision (e)(3), which precludes probation for “[a]ny person who willfully inflict[s] great bodily injury or torture in the perpetration of the crime of which he or she has been convicted,” does not apply to her. She argues that, because the jury did not find she willfully inflicted great bodily injury, the trial court erred in finding her presumptively ineligible for probation. The trial court, however, did not find Ingrassi was ineligible for probation under section 1203, subdivision (e)(3). The court found her ineligible for probation without citing any reasons. On a silent record, we cannot presume the court erroneously applied section 1203, subdivision (e)(3). (See *People v. Lee*, *supra*, 16 Cal.App.5th at p. 867.)

There is no reasonable probability the court, even if it had not found Ingrassi was ineligible for probation, would have found her suitable for probation. (See *People v. Osband* (1996) 13 Cal.4th 622, 728 [a sentencing error “does not necessitate resentencing if “[i]t is not reasonably probable that a more

favorable sentence would have been imposed in the absence of the error”]; *People v. Gamble* (2008) 164 Cal.App.4th 891, 901 [“[i]f the record shows that the trial court would not have exercised its discretion even if it believed it could do so, then remand would be an idle act and is not required”]; *People v. Gutierrez* (1987) 195 Cal.App.3d 881, 884-885 [trial court’s erroneous determination a statute precluded probation did not require resentencing because it was not reasonably probable the court would have found the defendant eligible for probation had it considered the remaining statutory factors].) The trial court stated it had read and considered the probation report, which contained a statement of how Aiden’s death devastated Torres and her family. At the hearing, multiple family members and friends recounted their personal anguish in the aftermath of Ingrassi’s crime. (See *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1158 [“A sentencing court may consider the emotional and financial impact of the offense on the victim’s family in deciding whether to deny probation.”].) In addition, the trial court imposed the upper term on Ingrassi’s convictions for child abuse and the true finding on the allegation under section 12022.7, subdivision (d), which indicates the court’s intention to impose the maximum punishment permitted on Ingrassi. As the People put it, “Regardless of whether [Ingrassi] was strictly ineligible for probation . . . no reasonable judge would have granted [Ingrassi] probation, and no reasonable attorney would have requested probation under the circumstances of this case, in which a jury determined that [Ingrassi] had killed an infant with malice.”

DISPOSITION

The judgment is affirmed.⁵

SEGAL, J.

We concur:

PERLUSS, P. J.

STONE, J.*

⁵ Ingrassi also filed a petition for writ of habeas corpus, case number B291556, which she asks us to consider with her direct appeal. We deny the petition by separate order.

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