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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| **THE PEOPLE OF THE STATE OF CALIFORNIA,**<br>Plaintiff and Respondent,<br>v.<br>**REGINALD WYATT,**<br>Defendant and Appellant. | S161545 |



First Appellate District, Division Two, No. A114612
Alameda County Superior Court No. C147107
The Honorable Jon Rolefson, Judge

# RESPONDENT'S OPENING BRIEF ON THE MERITS

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| | |
|---|---|
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## ISSUE

In granting review, the Court limited briefing and argument to the following issue:

> Did substantial evidence support defendant's conviction for a caregiver's assault on a child by means of force likely to produce great bodily injury causing death (Pen. Code, § 273ab)? Specifically, was there evidence that defendant was "aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct" (*People v. Williams* (2001) 26 Cal.4th 779, 788)[?]

## INTRODUCTION

Fourteen-month old Reginald Wyatt Jr. (hereafter Reginald) died from massive blunt trauma injuries to his chest and abdomen suffered while he was in the care of appellant, his father. Appellant told the police that he hit Reginald multiple times in the chest, head, and back in order to "toughen him up." Appellant was arrested for murder. A jury convicted appellant of involuntary manslaughter and of assault on a child under eight by a caregiver causing death (child abuse homicide).

On appeal, the Court of Appeal agreed with appellant that substantial

evidence did not prove child abuse homicide. The Court of Appeal reasoned that appellant lacked awareness "of facts that would lead a reasonable person to realize that [his] act by its nature would directly and probably result in great bodily injury to the child." (Slip Op. at 24, brackets original.)

The Court of Appeal erred. The evidence amply supports the conviction. Therefore, the conviction and sentence should be reinstated.

## STATEMENT OF THE CASE

Appellant lived with his girlfriend, Tiffany Blake, and their infant daughter, Valerie, in an apartment in Oakland. (3 RT 453, 460.) Appellant began taking Reginald, who was his child from another relationship, for overnight visits after Reginald's first birthday. (1 RT 152.) Appellant, who had initially denied paternity, saw Reginald only sporadically during the child's first year. (1 RT 140, 148-151.) But at the time of Reginald's death, appellant and Ms. Blake were seeking custody of him from the child's mother. (Exh. 36 at 8.)

On Saturday, May 17, 2003, appellant arranged to take Reginald for the weekend. (1 RT 157-158.) Reginald was then 14 months old. (1 RT 127-128.) The next morning, Ms. Blake went to work, leaving appellant in charge of Reginald and Valerie. (3 RT 468.) Around 10:45 a.m., appellant had a neighbor call 911 because Reginald was not breathing. (2 RT 266-267.) Appellant told officers at the scene that he played with Reginald, gave him a cup of milk, put him down to rest, and later discovered Reginald was not breathing and had fluid coming from his nose. (4 RT 591.) Reginald was taken to the hospital and pronounced dead. (4 RT 701, 704.)

An autopsy showed that Reginald, 31 inches tall and 26 pounds, died of blunt trauma to the chest and abdomen. (2 RT 371, 373.) He bled from the heart and left lung; he had four lacerations to his liver which caused internal bleeding. (2 RT 379-380, 385-386.) He had bleeding in the tissue behind the

abdominal cavity and in the mesentery of the small and large intestines. (2 RT 390-391.) Reginald had acute fractures of the back fifth and sixth ribs on both the left and right sides. (2 RT 392, 395.) He had mild cerebral swelling. (2 RT 394.) His injuries were "basically at the end of the bell curve" and are seen only in "the most serious events" such as "car crashes, individuals who are hit by motor vehicles, things of that nature." (3 RT 498.) The force that caused Reginald's four broken ribs would have been "quite violent, quite out of the ordinary." (3 RT 505.)

On May 19, 2003, appellant learned of the autopsy results while he was visiting at the home of Charrikka Harris, Reginald's mother, when she received a phone call from the coroner's office. (1 RT 174, 4 RT 613.) The caller said, "They were en route to pick up" appellant. (1 RT 177.)

Appellant went to the police department, accompanied by his brother, Oakland Police Officer Anthony Caldwell. (4 RT 645, 647, 654.) In a tape-recorded statement, appellant told police investigators that on the morning in question, he wrestled and played with Reginald. (2 CT 239, 240-241, 251.) Appellant karate "chopped" Reginald on his back. (2 CT 241.) Appellant held Reginald up and pressed Reginald's stomach to appellant's head, and then flipped him a distance of about four feet onto the bed. (2 CT 242-243.) At one point, appellant accidentally fell on top of Reginald on the bed while attempting a wrestling move "like comin' off the top rope . . . ." (2 CT 241.) Appellant jumped on the bed "to make the whole bed rock" but Reginald rolled unexpectedly and appellant's hip landed with maybe all of his weight on Reginald's stomach. (2 CT 241, 243-244.) Before leaving for work, Ms. Blake warned appellant that he was playing too rough with Reginald and could hurt him. (2 CT 241, 244.)

After Ms. Blake left, appellant continued to wrestle Reginald for another 20 to 30 minutes. (2 CT 245-247, 252.) Appellant body slammed Reginald four

times, hit him in the chest with his fist 10 or 11 times, hit him in his back, and did an "atomic elbow" to Reginald's head. (2 CT 247-248.) Appellant hit Reginald in his upper chest with his forearm about three times. (2 CT 248.) Appellant may have suspended the child in midair by holding him by his neck. (2 CT 248-249; 4 RT 711.) Appellant grabbed Reginald between appellant's legs and squeezed. (2 CT 249.) Appellant's knee went down on Reginald's back twice, a maneuver appellant called "the knee drop." (2 CT 249-250.) Appellant said "the favorite move" was "the supplex" where appellant grabbed Reginald and flipped him onto the bed. (2 CT 250-251.)

Appellant told the officers that he did not disclose this information earlier because he did not make a connection between what he did to Reginald and Reginald's death. (2 CT 259-260.) Appellant wanted Reginald to be more active and was trying to "toughen him up." (2 CT 267.) Appellant explained, "All I was tryin' to . . . just kinda toughen him up. Because this . . . it's hard out here. Y'all know how many people get killed out here, too." (2 CT 35.) Appellant recounted a story about "some kids out there messin' with some other little kids . . . slappin' one little kid upside the head" and taunting him, "'Oh, you soft. You pussy! You soft!'" (2 CT 267.) Appellant believed that one cannot be "soft" to grow up in Oakland. (2 CT 267.) Appellant "just had a one-track mind" when he was "stuck on toughening him up, playin' with Reggie, beatin' up Reggie . . . ." (2 CT 272.) Appellant said, "But then . . . it got . . . came to a point where it got more serious than that, and I didn't notice and I wasn't thinkin' . . . that I can hurt him. I wasn't thinkin'." (2 CT 272.) Appellant admitted, "I was hittin' him pretty hard." (2 CT 273.)

At trial, the jury listened to appellant's two tape-recorded interviews with investigating officers in which he made these incriminating statements. (4 RT 694, 735.)

Appellant testified in his own defense. He admitted prior convictions of

battery on a police officer, possession of a weapon, and possession with intent to distribute cocaine. (5 RT 1009-1011.) He denied hitting Reginald even once and said he used only "make-believe wrestling moves" on Reginald. (5 RT 1043, 1045, 1048, 1114.) Appellant would "throw him on the bed" and Reginald would laugh. (5 RT 1037.) Appellant would jump on the bed to make it shake. (5 RT 1038.) At one point, an accident occurred. (5 RT 1038.) Appellant was jumping on the bed to make it shake but as he was coming down, Reginald turned and appellant's hip landed on Reginald's back. (5 RT 1039-1041.) Reginald seemed normal after the accident. (5 RT 1054.) Reginald had some milk and lay down. (5 RT 1054.) Appellant later found Reginald unresponsive. (5 RT 1056.) Appellant did not know what caused Reginald's death. He learned at trial that falling on Reginald could have caused his substantial injuries. (5 RT 1081.) As for his incriminating statements to the police, appellant testified he was persuaded to think that he hit Reginald harder than he believed, began "second-guessing" himself, and thought he may have caused Reginald's death by wrestling too hard with him. (5 RT 1103, 1106, 1119-1120, 1140.) Appellant said he "just kind of went along" with the investigating officers "because they knew, you know, basically what happened." (5 RT 1104.)

Several defense witnesses testified that appellant was happy when he found out that Reginald was his son and that he loved the child. (5 RT 922, 984, 998.) A defense expert testified that it was possible Reginald's injuries resulted from a single sharp blow to the back, such as a 170-pound man falling on him, but that it would be unlikely if the child were lying on a bed. (7 RT 1316, 1336.) The defense expert observed, "The liver has been forcibly squeezed to the point that it's just ruptured in various places" and the chest was squeezed "to the point that the ribs are broken on both sides . . . ." (7 RT 1337-1338.)

On rebuttal, Sergeant James Rullamas contradicted appellant's version of

his interview at the police station. Sergeant Rullamas never suggested the idea of toughening up his son; it was appellant who said he wanted to toughen up his son because he was acting like a baby. (7 RT 1468.) Sergeant Rullamas never told appellant he should make certain statements. (7 RT 1469.)

A jury convicted appellant of involuntary manslaughter (Pen. Code, § 192, subd. (b)) and child abuse homicide (Pen. Code, § 273ab). (2 CT 327.) The trial court sentenced him to 25 years to life for child abuse homicide and stayed sentence under Penal Code section 654 for the manslaughter. (2 CT 360.)

On appeal, appellant claimed the evidence was insufficient to support his conviction for assault on a child causing death. The First Appellate District, Division Two, agreed and reversed the conviction. This Court granted the People's petition for review and limited the issue, as stated above.

## SUMMARY OF ARGUMENT

Ample evidence established that appellant was aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally, and probably result from his conduct. In his statement to the police investigators, appellant admitted that he wrestled with his 26-pound child, body slammed him four times, hit him in the chest with his fist 10 or 11 times, hit him in the chest with his forearm about three times, possibly suspended the child in midair by his neck, grabbed Reginald between his legs and squeezed, dropped his knee on Reginald's back twice, and did an "atomic elbow" to his head. Appellant admitted, "I was hittin' him pretty hard."

The medical evidence confirmed Reginald was hit hard. The prosecution's expert detailed at length Reginald's extensive injuries, including internal bleeding, four lacerations to the liver, acute fractures of four ribs, and cerebral swelling. The defense's own expert observed, "The liver has been forcibly squeezed to the point that it's just ruptured in various places" and the chest was

squeezed "to the point that the ribs are broken on both sides . . . ."

The evidence showed that appellant was aware of the facts that would lead a reasonable person to understand that a battery would directly, naturally, and probably result from his conduct.

## ARGUMENT

The standard for reviewing the sufficiency of evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (See *People v. Stanley* (1995) 10 Cal.4th 764, 792-793.)

Appellant was convicted of child abuse homicide. Penal Code section 273ab reads: "Any person who, having the care or custody of a child who is under eight years of age, assaults the child by means of force that to a reasonable person would be likely to produce great bodily injury, resulting in the child's death, shall be punished by imprisonment in the state prison for 25 years to life. Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 189."

"The elements of assault on a child, resulting in death, are: (1) A person, having the care or custody of a child under the age of eight; (2) assaults this child; (3) by means of force that to a reasonable person would be likely to produce great bodily injury; (4) resulting in the child's death." (*People v. Malfavon* (2002) 102 Cal.App.4th 727, 735.) Under this statute, "[w]hether the intended act in its nature is one likely to produce great bodily harm is a question for the jury. It is not required that the actor intend to produce great bodily injury or death, nor is it required that he know or should know the act is intrinsically capable of causing such consequences." (*People v. Albritton* (1998) 67 Cal.App.4th 647, 659 [*Albritton*].)

In *People v. Williams* (2001) 26 Cal.4th 779 (*Williams*), this Court

"reaffirm[ed] that assault does not require a specific intent to injure the victim." (*Id.* at p. 788.)

> [A]ssault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.

(*Id.* at p. 790.)

*Williams* clarified that "a defendant guilty of assault must be aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct," but that an individual "need not be subjectively aware of the risk that a battery might occur." (*Id.* at p. 788, fn. omitted; accord, *People v. Hayes* (2006) 142 Cal.App.4th 175, 180.) By the same token, to commit an assault within the meaning of the child abuse homicide statute, a defendant need not have actual knowledge that the act is capable of causing great bodily injury or death to the child. (*Albritton*, *supra*, 67 Cal.App.4th at pp. 658-659.) Instead, a defendant need only be aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally, and probably result from his conduct. (*Williams*, *supra*, 26 Cal.4th at p. 788.)

The jury was presented with evidence, out of appellant's own mouth on tape, that appellant body slammed Reginald, hit him in the chest and back, dropped his knee on his back, squeezed him, and gave his head an "atomic elbow." The jury also heard appellant's testimony that his police statements were coerced and untrue, and that appellant only accidentally fell on Reginald. The jury could reasonably find that appellant abused Reginald just as appellant described in vivid detail to the police.

The evidence shows appellant knew of his own wilful acts—indeed he gave a full account of them to the investigators. Actual knowledge of those facts would lead a reasonable person to realize that the application of physical force

against another would directly, naturally, and probably result from his conduct. (See *People v. Stewart* (2000) 77 Cal.App.4th 785, 794.) Appellant's protest that he did not intend Reginald any harm does nothing to alter the fact that his intentional acts would lead a reasonable person to realize that a battery would directly, naturally, and probably result.

Citing *Williams*, the Court of Appeal correctly stated the issue was "whether there was substantial evidence that appellant 'was aware of facts that would lead a reasonable person to realize that [his] act by its nature would directly and probably result in great bodily injury to the child.' (CALCRIM No. 820.)" (Typed Opn. at p. 21.)[1/] However, the court then conflated the subjective and objective components of assault and erroneously concluded that assault on a child causing death requires the defendant to *know* that his conduct will probably and directly result in great bodily injury to the victim. The court reversed the conviction because the evidence did not establish appellant had this subjective awareness.

The Court of Appeal observed that "there was absolutely no evidence that appellant had been violent with Reginald in the past" (typed opn. at p. 22), and that "there was no evidence whatsoever that appellant was motivated by anger or frustration during his interaction with Reginald" (typed opn. at p. 23). As for appellant's statements to interviewing officers, the court found that "[t]hese statements plainly do not provide sufficient evidence to satisfy the *actual knowledge* requirement for assault. (See CALCRIM No. 820; *Williams*, *supra*,

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1. The Court of Appeal stated, "For purposes of this discussion, we will assume that the jury believed the prosecution theory that Reginald was harmed by appellant's wrestling moves alone or by a combination of wrestling and falling on him, rather than solely by appellant's jumping on the bed and falling on Reginald. That is because, if the evidence was insufficient to support the section 273ab conviction based on the wrestling scenario, it was necessarily insufficient also to support the conviction based on the jumping on the bed scenario." (Typed opn. at p. 21, fn. 7.)

26 Cal.4th at p. 788.)" (Typed opn. at p. 23.)

The First District concluded:

> Instead, what the evidence showed, and as appellant said both in the taped interview and at trial, it never occurred to appellant that he was hurting Reginald because he was playing with him. Appellant's actions were incredibly misguided. To say that he showed poor judgment is a gross understatement, given the disastrous consequences. Nonetheless, while the evidence reveals negligence of an astounding degree and to tragic effect, it does not demonstrate that appellant had the requisite awareness "of facts that would lead a reasonable person to realize that [his] act by its nature would directly and probably result in great bodily injury to the child" to support the conviction for assault on a child causing death. (CALCRIM No. 820; see *Williams*, *supra*, 26 Cal.4th at pp. 788, 790.) Consequently, the judgment as to this count must be reversed.

(Typed opn. at pp. 23-24, footnotes omitted.)

The Court of Appeal remarked that "it never occurred to appellant that he was hurting Reginald because he was playing with him" (typed opn. at p. 23) and that appellant's admission to play-fighting in order to toughen Reginald up "does not provide evidence that appellant knew he was using undue force on his child" (typed opn. at p. 23, fn. 10).

These statements by the Court of Appeal reflect a flawed analysis of the issue. The question for the jury's resolution was whether a *reasonable person*, viewing the facts known to appellant, would find that appellant's conduct was likely to result in great bodily injury to the child. Here, the evidence reflected that appellant, in his own words, knew he was applying physical force "pretty hard" to a 14-month-old. (2 CT 273.) "[A]ssault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur." (*Williams*, *supra*, 26 Cal.4th at p. 788.)

Plainly, appellant had "actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another." (*Williams*, *supra*, 26 Cal.4th at

p. 790.) "[A] defendant's knowledge of the relevant factual circumstances is rarely in dispute." (*Ibid.*) The only issue in dispute was whether a reasonable person would find that the force used against Reginald was likely to result in great bodily injury. (*Albritton*, *supra*, 67 Cal.App.4th at p. 658; see *Williams*, *supra*, 26 Cal.4th at p. 788.) The jury answered that question in the affirmative, given the compelling evidence of Reginald's injuries.

The Court of Appeal's finding of insufficient evidence of child abuse homicide was therefore erroneous. There was ample evidence that appellant was "aware of the facts that would lead a reasonable person to realize that a battery would directly, naturally and probably result from his conduct." (*Williams*, *supra*, 26 Cal.4th at p. 788.)

## CONCLUSION

Accordingly, respondent respectfully requests that the judgment of the Court of Appeal be reversed.

Dated: June 13, 2008

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 3,330 words.

Dated: June 13, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **People v. Wyatt** No.:**S161545**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 13, 2008, I served the attached RESPONDENT'S OPENING BRIEF ON THE MERITS by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 13, 2008, at San Francisco, California.

B. Wong
Declarant

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Signature

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