

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
REGINALD WYATT,
Defendant and Appellant.

S161545

SUPREME COURT
FILED

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Frederick K. Onizca, Clerk

Deputy

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

RESPONDENT'S REPLY BRIEF ON THE MERITS

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**SUBSTANTIAL EVIDENCE SUPPORTS APPELLANT’S
CONVICTION**

The issue in this case is whether substantial evidence supports appellant’s conviction for child abuse homicide under Penal Code section 273ab. Specifically, the Court asked the parties to address whether the evidence showed appellant “was ‘aware of 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) [?]” (Order granting review, May 14, 2008.)

In our Opening Brief on the Merits, we set forth the evidence showing that appellant was aware of facts that would lead a reasonable person to realize that a battery would directly, naturally, and probably result from his conduct.

In his Answer Brief on the Merits, appellant suggests that “it would be proper for this Court to consider overruling *Williams*” and to “adopt Justice Kennard’s views expressed in her dissenting opinions in *Colantuono* [*People v. Colantuono* (1994) 7 Cal.4th 206] and *Williams*” (AB at p. 25 and fn. 6.) Appellant argues that assault requires “an evil purpose or intent” (AB at p. 26) and that appellant’s “play wrestling” with his child Reginald “was not done for evil or criminal purpose” (AB at p. 37). On this basis, appellant argues the

evidence was insufficient to support his conviction for child abuse homicide.

Appellant's argument that assault requires an evil intent or purpose to harm the victim has been firmly rejected by this Court. Assault is a general intent crime and "does not require a specific intent to injure the victim." (*Williams, supra*, 26 Cal.4th at p. 788, see *People v. Chance* (Aug. 18, 2008, S145458) ___ Cal.4th ___, 2008 D.A.R. 12883.) The mental state required for assault was explained in *Williams* as follows:

[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. He may not be convicted based on facts he did not know but should have known. He, however, need not be subjectively aware of the risk that a battery might occur.

(*Id.* at p. 788, footnote omitted.)

The jury heard evidence, including appellant's own statements, that he 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." (2 CT 241-2451.) Appellant wanted Reginald to be more active and was trying to "toughen him up." (2 CT 267.) Appellant admitted he was hitting Reginald "pretty hard." (2 CT 273.) Reginald died from blunt trauma to the chest and abdomen, injuries commonly seen in people hit by a motor vehicle. (3 RT 371, 373, 498.) Appellant obviously knew of his own conduct toward Reginald. A reasonable person would find that the force used against Reginald was likely to result in great bodily injury. Ample evidence supports appellant's conviction for child abuse homicide.

CONCLUSION

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

Dated: August 25, 2008

Respectfully submitted,

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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 August 26, 2008, I served the attached **RESPONDENT'S REPLY 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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First Appellate District, Division Two
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County of Alameda
Rene C. Davidson Courthouse
Superior Court of California
1225 Fallon Street
Oakland, CA 94612-4293

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 August 26, 2008, at San Francisco, California.

B. Wong
Declarant

B. Wong
Signature

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B. Wong

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Signature