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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.

MICHAEL VELEZ,

Defendant and Appellant.

B276315

(Los Angeles County
Super. Ct. No. KA111979)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mike Camacho, Judge. Affirmed.

Megan Hailey-Dunsheath, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Steven E. Mercer, Deputy Attorney General, for Plaintiff and Respondent.

Shortly after midnight, Michael Velez fled from the police, driving a stolen car at speeds in excess of 95 miles per hour through the streets of Pomona before crashing into a palm tree. A jury found Velez guilty of driving in willful or wanton disregard for the safety of a person or property while fleeing from a pursuing peace officer and unlawfully driving or taking a vehicle. The police officer who engaged in the pursuit lost sight of the fleeing vehicle before he found an injured Velez lying on the ground near a damaged car. Velez contends the trial court erred by admitting the officer's opinion testimony that Velez was ejected from the car as a result of the collision. Velez argues that because the officer was not qualified as an expert in accident reconstruction, the admission of his opinion was prejudicial error.

We conclude the officer's testimony was admissible as lay opinion, and, in any event, any error in admitting the opinion testimony was harmless. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Pursuit*

On December 28, 2015, at around 1:00 a.m., City of Pomona Police Officer Francesco Sacca was driving on patrol in a marked black and white police car. He was stopped at an intersection waiting to turn when a black Honda Accord passed through the intersection approximately 12 feet in front of him. The driver's side window of the black Honda Accord passed directly in front of the officer's stopped police vehicle. Officer Sacca saw one person in the car, a male Latino with tattoos wearing a black hooded sweatshirt and a black hat.

Officer Sacca turned left at the intersection and followed behind the black car. The black car immediately accelerated and turned right at the next intersection without stopping at the red light. With Officer Sacca now in pursuit, the black car accelerated again and made several turns, running a stop sign and another red light before Officer Sacca was able to approach close enough to read the license plate. Once he was able to see the license plate, Officer Sacca broadcasted the number to other police officers and activated his patrol car's overhead lights and siren. Upon activating the lights and siren, the police car's dashboard video camera commenced recording.

The black car continued to drive at a high rate of speed and ran more red lights. Officer Sacca drove up to 95 miles per hour in pursuit, yet the black car pulled away and out of sight. While driving southbound on Garey Avenue in the No. 1 lane, Officer Sacca passed a black sedan facing northbound in the No. 2 lane close to the curb. The black sedan appeared to have been involved in a collision, and there was debris in the street from the car. Officer Sacca initially believed the car had been run off the road and crashed because of the fleeing vehicle. He reported the collision to the police dispatcher who broadcasted the information to other officers. Officer Sacca saw a black car driving ahead of him and thought it was the car he had been pursuing. He followed the car, but it pulled to the curb as he caught up with it. Officer Sacca concluded the crashed black sedan was the car he had been pursuing, so he turned back.

Officer Daniel Gomez was the first to arrive at the scene of the crashed black sedan. He arrived at the scene a few seconds after he heard the dispatcher's broadcast over the radio. There was debris in the street, and the rear of the sedan was badly

damaged. Officer Gomez found Velez lying in the street with blood on his face, a head laceration, a skull fracture, a severely broken leg, and other injuries. Officer Sacca arrived shortly after Officer Gomez. Officer Sacca noted that the license plate number of the crashed car matched that of the car he had been pursuing. The Honda Accord had been stolen on December 27, 2015, from where it had been parked in front of the owner's home. In the ignition Officer Sacca found a shaved key which allowed it to start the car even though it was not the key designed for that car. Apart from Velez and Officer Gomez, Officer Sacca did not see anyone else at the scene or fleeing the scene. At the scene of the collision and again at trial, Officer Sacca identified Velez as the driver of the fleeing black Honda Accord.

B. *Officer Sacca's Opinion*

Officer Sacca testified at trial on direct examination that there were skid marks in the street leading to a large palm tree located in the median area of the street at the scene of the crash. Based on the damage to the rear of the vehicle, Officer Sacca surmised the rear of the sedan had struck the palm tree. The driver's seat was in a reclined position. The driver's side rear window was broken, and there was blood on the window frame. After seeing a photograph of the window frame, Officer Sacca testified there was "skin matter" as well as blood on the window frame.

On recross examination, the defense counsel asked, "Now, the district attorney has asked you before, at the preliminary hearing to be exact, about why—how you thought my client ended up out of the vehicle; right?" After Officer Sacca responded, "Yes," the defense counsel asked, "You didn't mention

to him then that you saw blood and skin matter on the window; is that accurate?" Officer Sacca responded, "I don't recall, ma'am."

On further redirect examination, the following exchange occurred:

Prosecutor: "You said at the preliminary hearing it was your opinion that he was ejected out of that window; right?"

Defense counsel: "I'm going to object as improper opinion."

The court: "It's fair examination now that you referenced it in cross. Go ahead, People, reask the last question."

Prosecutor: "I mean, you testified at your prelim that based off the striking the vehicle, the rear end of it into the tree and your observations of the vehicle that the defendant was ejected from the car; is that right?"

Officer Sacca: "Yes."

Prosecutor: "And this matter on that window is significant in relationship to that ejection because why?"

Officer Sacca: "It would show that he exited out [of] that window at some point, at least a part of him did."

Prosecutor: "And the opinion you rendered was that the seat of that car acted like a ramp and ejected him out of the car?"

Officer Sacca: "Yes."

Prosecutor: "Because it was going backwards and ejected him right out?"

Officer Sacca: "Yes."

On further recross-examination, the defense elicited Officer Sacca's testimony that he had some training in accident reconstruction, "but not at this level." Defense counsel went on to examine Officer Sacca about his preliminary hearing testimony and the basis for his opinion that Velez had been ejected from the car. Defense counsel asked if Officer Sacca based his opinion on

the fact he saw the driver's seat in a reclined, ramp-like position and Velez's body lying next to the car consistent with someone having being ejected from the driver's seat. To these questions, Officer Sacca answered, "Yes." Counsel then asked whether Sacca based his opinion at the preliminary hearing on the fact he had seen blood or skin on the window frame. Officer Sacca responded, "If I didn't mention that [at the preliminary hearing], then, no."

C. *The Verdict and Sentence*

The jury returned a guilty verdict on a felony count of driving in willful or wanton disregard for the safety of a person while fleeing from a pursuing peace officer (Veh. Code, § 2800.2) and a felony count of unlawfully driving or taking a vehicle (*id.*, § 10851, subd. (a)). The trial court found true an allegation under the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12) that Velez had been convicted of a prior serious or violent felony, and an allegation that Velez had served prior terms of incarceration and had not remained free from prison custody for a period of five years following his release from custody (*id.*, § 667.5, subd. (b)). The court sentenced Velez to an aggregate prison term of six years four months.

DISCUSSION

A. *The Trial Court Properly Admitted the Lay Opinion Testimony*

Velez contends the trial court erred by admitting Officer Sacca's opinion that Velez was ejected from the vehicle as a result of the crash. Because Officer Sacca did not witness the crash and

lacked the foundation to testify as an expert in accident reconstruction, his opinion, according to Velez, was inadmissible. Velez reads the scope of lay opinion testimony too narrowly. We consider the opinion a permissible lay opinion.

Evidence Code section 800 states, “If a witness is not testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is permitted by law, including but not limited to an opinion that is: [¶] (a) Rationally based on the perception of the witness; and [¶] (b) Helpful to a clear understanding of his testimony.” (See *People v. Becerrada* (2017) 2 Cal.5th 1009, 1032 [“A lay witness may testify to an opinion if it is rationally based on the witness’s perception and if it is helpful to a clear understanding of his testimony”].) However, matters beyond common experience that require particular scientific knowledge are not proper subjects of lay opinion testimony. (*People v. DeHoyos* (2013) 57 Cal.4th 79, 131.) We review the trial court’s ruling on the admission of lay opinion for abuse of discretion. (*People v. Sánchez* (2016) 63 Cal.4th 411, 456.) A trial court has broad discretion to admit lay opinion testimony, particularly if the testimony is subject to cross-examination, as it was here. (*In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127, 145 [“A trial court has broad discretion to admit lay opinion testimony, especially where adequate cross-examination has been allowed”]; *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 876-877 [“Appellate courts accord broad deference to the trial court’s decision to admit lay opinion testimony that is subject to cross-examination”].)

Officer Sacca’s testimony was rationally based on his personal observations and required no specialized knowledge or

expertise. He saw the black Honda Accord speeding through red lights and stop signs and then drove by a crashed black sedan facing the wrong direction in the street with the rear of the car badly damaged. When Officer Sacca realized the crashed sedan was the same car he had been pursuing and returned to the sedan, Velez was lying in the street with blood on his face, a head injury, and a broken leg. He identified Velez as the driver of the fleeing vehicle. Observing the driver's side rear window was broken and the driver's seat was in a reclined position, and seeing blood and skin on the rear window frame, Officer Sacca concluded Velez was ejected from the car through the broken window as a result of the collision. This was a rational conclusion. A person of ordinary education and experience could so testify. To reach such a conclusion did not require any special training. (Compare *People v. Farnam* (2002) 28 Cal.4th 107, 153-154 [correctional officer's testimony that defendant "stood 'in a posture like he was going to start fighting'" was rationally based on the officer's personal observations and helped to clarify his testimony] with *People v. Williams* (1992) 3 Cal.App.4th 1326, 1332-1333 [police officer's opinion that the defendant was intoxicated based in part on officer's knowledge, training, and experience with a particular scientific test was not lay opinion].)

Officer Sacca's opinion on how Velez ended up lying in the street helped convey to the jury the officer's raw observations and their significance. His observations concerning the damage to the rear of the sedan, the reclining driver's seat, the broken rear window, the blood and skin on the window frame, and Velez's position lying in the street outside the vehicle were better understood together with the reasonable explanation that Velez

was ejected from the vehicle through the broken rear window as a result of the collision.

The trial court acted within its discretion to admit the lay opinion testimony. (See *People v. Becerrada*, *supra*, 2 Cal.5th at pp. 1032-1033 [correctional officer's lay opinion regarding the defendant's conduct in prison was based on the officer's perception and was helpful to an understanding of his testimony]; *People v. Sánchez*, *supra*, 63 Cal.4th at p. 456 [testimony that the defendant tried to change his handgun clip was based on concrete observations, and trial court reasonably concluded witness could convey those observations only through lay opinion]; *Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 329-331 [witness's impression that motorcyclist could not avoid hitting a truck was permissible lay opinion]; *People v. Maglaya* (2003) 112 Cal.App.4th 1604, 1609 [police officer's testimony that shoeprints found at a crime scene were similar to the soles of the defendant's shoes was based on the officer's perception and helpful to an understanding of his testimony].)¹

¹ The People also contend Officer Sacca's opinion was properly admitted because defense counsel opened the door by asking, "[n]ow, the district attorney has asked you before, at the preliminary hearing to be exact, about why—how you thought my client ended up out of the vehicle; right?" Given our ruling, we need not address this argument. Although the trial court stated "[i]t's fair examination now that [defense counsel] referenced it in cross," the court instructed the jury on lay opinion testimony. (CALCRIM No. 333, Opinion Testimony of Lay Witness.) In accordance with the presumption in favor of the judgment, we assume the court admitted Officer Sacca's testimony as lay opinion. (See *People v. Becerrada*, *supra*, 2 Cal.5th at p. 1032 ["It is not clear from the record whether the evidence was offered and admitted as *expert* opinion . . . or as *lay* opinion. We will assume

B. *Any Error Was Harmless*

Velez argues the admission of Officer Sacca's opinion was prejudicial because there was no reliable evidence Velez drove the fleeing car and Officer Sacca's opinion provided the missing link placing Velez inside the car as the driver. Velez argued at trial that he was not the driver of the fleeing vehicle and the actual driver ran off before the police arrived. To explain his injuries, Velez argued that he was a pedestrian hit by the fleeing car as it crashed into the palm tree and was lying in the street, mistaken as debris, when Officer Sacca ran over him while in pursuit of the fleeing car. On appeal, Velez contends "[t]he crux of the defense case was that [he] was not the driver of the black Honda and that he sustained his injuries by being run over by a police vehicle." We conclude if there were any error in the admission of Officer Sacca's opinion, any such error was harmless.

An error in the admission of evidence is grounds for reversal only if it is reasonably probable that the defendant would have obtained a more favorable result absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836; accord, *People v. Pearson* (2013) 56 Cal.4th 393, 446 [*Watson* harmless error standard applies to the erroneous admission of expert opinion by

the evidence was offered as lay opinion. As such, it was admissible"]; *Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1006 ["The most fundamental principle of appellate review is that 'A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness.' [Citations.] And, of course, we will uphold the decision of the trial court if it is correct on any ground"].)

a witness not qualified as an expert]; *People v. Shorts* (2017) 9 Cal.App.5th 350, 362 [applied *Watson* standard in concluding any error in admission of lay opinion that another person was not the killer was harmless because the opinion added very little to witness's personal observations]; *People v. Bradley* (2012) 208 Cal.App.4th 64, 84 [applied *Watson* standard in concluding admission of improper lay opinion regarding author's intent in drafting a city council resolution was harmless].)

Contrary to Velez's contention, Officer Sacca's opinion was not the missing link connecting Velez to the crashed car. That link was firmly established by the other evidence presented in the case: most notably, Officer Sacca's eyewitness identification that Velez was the driver of the fleeing vehicle, which testimony was corroborated by a host of other evidence that similarly pointed directly to Velez as the driver of the car. Officer Sacca testified when he first observed the black Honda Accord from a distance of approximately 12 feet he saw only one person in the car.² When Officer Sacca later stopped at the scene of the crash, he confirmed that the license plate number of the crashed black Honda Accord matched that of the car he had been pursuing. He

² Velez contends Officer Sacca's identification was not reliable because Officer Sacca was not a credible witness. Velez points to several discrepancies in his testimony, including, but not limited to: the model of the fleeing car; the description of the driver of the vehicle; the existence of blood and skin on the window; and the use of a spotlight to see the driver of the car pulled to the side of the road. To be sure, these discrepancies may affect Officer Sacca's credibility on certain issues, but they do not diminish the strength of the other corroborating evidence that substantiates Officer Sacca's identification and places Velez in the driver's seat.

saw Velez lying in the street injured. Officer Sacca did not see anyone else at the scene, apart from another officer, and saw no one fleeing the scene. The driver's side rear window was broken, the driver's seat was reclined, there was blood and skin matter on the window frame, and blood on Velez's face. Velez had suffered a head laceration, a skull fracture, and other injuries. Thus, even without Officer Sacca's opinion that Velez was ejected from the car in a crash, the evidence led to the same conclusion.³

Although defense counsel argued Velez was an innocent victim who was injured by the speeding black sedan and then run over by Officer Sacca, there was no evidence supporting this theory. The defense did not present any evidence Officer Sacca's vehicle was damaged by running over Velez. In fact, Officer Sacca testified he checked the undercarriage of his car and found no evidence he hit or ran over anyone.

Given the foregoing, we conclude any error in admitting Officer Sacca's opinion was harmless because it is not reasonably probable Velez would have obtained a more favorable result had the court excluded Officer Sacca's opinion.

³ The People introduced the following exhibits: the dashboard camera video from Officer Sacca's vehicle; photos of the black Honda Accord after the crash; photos of the palm tree hit by the car; Officer Gomez's dash camera video of his response to the crash; photos of the window where Officer Sacca testified he found skin matter and blood; and 54 pages of photographs taken at the scene of the collision.

DISPOSITION

The judgment is affirmed.

BENSINGER, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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