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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.

DARRELL LEE WILLIAMS,

Defendant and Appellant.

B271591

(Los Angeles County
Super. Ct. No. GA088486)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dorothy Shubin, Judge. Affirmed.

Jeffrey J. Gale, 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, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

Darrell Lee Williams appeals from a judgment of conviction of two counts of voluntary manslaughter and five counts of assault with a deadly weapon. He argues the trial court improperly denied his *Trombetta/Youngblood*¹ motion because the state breached its duty to preserve material evidence. Alternatively, he argues the trial court erred in rejecting his proffered jury instruction concerning failure to preserve evidence. We disagree and affirm.

FACTUAL AND PROCEDURAL SUMMARY

On the evening of December 25, 2012, Pasadena Police Department Officer Jason Cordova and Federal Bureau of Investigation Special Agent James Manzi were on patrol in an unmarked vehicle in Pasadena. A shooting had occurred earlier that day in the area. Cordova and Manzi saw a Dodge Durango matching the description of a vehicle connected with the shooting.

Appellant was driving the Durango and had three passengers.² The officers decided to conduct a pretext stop, following the Durango until appellant committed a traffic code violation. When appellant stopped over the limit line at a stop sign, Cordova activated blue and red police lights and pursued the Durango.

During the pursuit, the officers saw a passenger in the Durango furtively reach down towards the floorboards and up towards the driver's area. The officers were concerned by these

¹ *California v. Trombetta* (1984) 467 U.S. 479; *Arizona v. Youngblood* (1988) 488 U.S. 51.

² It later was determined that neither appellant nor the passengers were involved in the shooting which had taken place earlier that day.

movements. When the Durango stopped, the officers exited their vehicle with service weapons drawn, announced that they were police, and directed the driver and passengers to show their hands. At that moment, appellant drove the Durango away from the officers at a high speed. The officers returned to their vehicle and followed the Durango with police lights and sirens activated.

Appellant was driving at 85 miles per hour. The speed limit in the area was 35 miles per hour. Passengers in the Durango told appellant to stop or slow down. Appellant attempted to make a slight right turn at high speed, causing his vehicle to fishtail.

Kenric Ng was stopped at an intersection, waiting to turn left, when appellant's Durango came racing towards his minivan. Appellant applied the brakes but the vehicle did not stop in time to avoid running a red light and colliding with the minivan. The minivan went airborne and slammed into a pole. The impact caused the death of two minivan passengers and serious injuries to the driver and two other passengers. At the moment of impact, the Durango was traveling at about 76 miles per hour. In braking, the Durango left 76 feet of tire marks on the road.

A handgun was found on a street where the pursuit had occurred. It bore markings suggesting it was thrown from the Durango during the pursuit.

The Durango was taken by police to Master Automotive Tow Service and placed under an evidence hold, which meant that it should not be released without police preauthorization. A traffic officer inspected the vehicle and determined that all components, including the brake system, were functional. Appellant's attorney asked that the vehicle be made available for inspection by a defense expert. When a traffic officer brought the

defense expert to the tow yard, they were both surprised to find that the tow service had sold the Durango without police authorization.

Appellant was charged with two counts of murder under Penal Code section 187, subdivision (a)³ as to the two minivan passengers who died, five counts of assault with a deadly weapon (automobile) under section 245, subdivision (a)(1) as to all five minivan passengers, and one count of possession of a firearm by a felon, a violation of section 29800, subdivision (a)(1). The case was tried before a jury, resulting in conviction of two counts of the lesser included offense of voluntary manslaughter (§ 192, subd. (a)) and five counts of assault with a deadly weapon (automobile). He was found not guilty of possession of a firearm by a felon.

The trial court found true allegations that appellant had been convicted of two robberies, each constituting prior serious felonies under section 667, subdivision (a)(1). Appellant made a *Romero*⁴ motion to strike these prior felonies, which was denied. The court sentenced him to 25 years to life for voluntary manslaughter under section 667, subdivision (e)(2)(A)(ii), with a five-year enhancement to run consecutively under section 667, subdivision (a)(1), resulting in a total sentence of 30 years to life in a state prison.⁵ Appellant also was sentenced to 25 years to life for the second count of voluntary manslaughter, to run concurrently. He was sentenced to 25 years to life for the five

³ All further statutory references are to the Penal Code.

⁴ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

⁵ The parties had agreed that only one of appellant's prior serious felonies would result in a five-year enhancement.

assault with a deadly weapon convictions, to run concurrently. The two assault with a deadly weapon convictions related to the victims who died were stayed pursuant to section 654 as arising from the same act for which appellant was convicted of voluntary manslaughter. Appellant was awarded 1,201 days of custody credits and 180 days of good time credits, totaling 1,381 days.

This appeal followed.

DISCUSSION

Appellant argues the trial court erred in denying his *Trombetta/Youngblood* motion based on police failure to preserve his Dodge Durango. He argues police allowed the vehicle to be lost or destroyed, preventing his expert from examining it to determine whether brake malfunctioning may have been partially responsible for the collision. We disagree.

We review the denial of appellant's *Trombetta/Youngblood* motion for substantial evidence. (*People v. Duff* (2014) 58 Cal.4th 527, 549.) In doing so, the entire record is considered in the light most favorable to the judgment. (*People v. Fulcher* (2006) 136 Cal.App.4th 41, 52.)

Law enforcement agencies have a duty to preserve evidence "that might be expected to play a significant role in the suspect's defense." (*California v. Trombetta, supra*, 467 U.S. at p. 488.) To fall within the scope of this duty, evidence must be "constitutionally material[]," meaning it "must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonable available means." (*Id.* at p. 489.) If "no more can be said [of the evidence] than that it could have been subjected to tests, the

results of which might have exonerated the defendant,” a due process violation will be found only if the police acted in bad faith. (*Arizona v. Youngblood*, *supra*, 488 U.S. at p. 57.)

The Durango was inspected before it was sold by the tow company. The inspection showed its brake system was fully functional, tending to inculcate appellant. (*People v. Cooper* (1991) 53 Cal.3d 771, 811 [police not required to preserve evidence more likely to support defendant’s guilt than innocence].)

Appellant was not left “unable to obtain comparable evidence” following the vehicle’s sale. Physical and expert testimonial evidence demonstrated the functionality of the brake system in the absence of a defense inspection of the vehicle. Physical evidence included tire friction marks created by the Durango, indicating its brakes had been applied. Expert testimony based on examination of physical and video evidence indicated the Durango slowed from 85 miles per hour to 76 miles per hour prior to impact with the victim’s vehicle. This evidence was “comparable” to the evidence which could have been obtained through further examination of the Durango’s brake system.

Appellant argues only that further testing of the vehicle could have produced exculpatory evidence. Even assuming that is so, the argument is too speculative a foundation on which to rest a requirement to preserve evidence. (*Arizona v. Youngblood*, *supra*, 488 U.S. at p. 57; see also *People v. Lucas* (2014) 60 Cal.4th 153, 221 [failure to preserve evidence with “potential” rather than “apparent” exculpatory value does not implicate due process absent police bad faith], disapproved on other grounds in *People v. Romero and Self* (2015) 62 Cal.4th 1, 53, fn. 19.)

Even were we to assume the Durango was “potentially” exculpatory evidence, appellant cannot prevail without demonstrating that the police acted in bad faith. “[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” (*Arizona v. Youngblood*, *supra*, 488 U.S. at p. 58.)

Police act in “bad faith” when they allow evidence to be lost or destroyed, knowing it has exculpatory value. (See *Arizona v. Youngblood*, *supra*, 488 U.S. at p. 56 fn. *; see also *People v. DePriest* (2007) 42 Cal.4th 1, 42.) In this case, there is no evidence that police allowed the Dodge Durango to be lost or destroyed. Rather, they took action to preserve the vehicle, placing it with a towing company under an evidence hold with instructions not to release the vehicle without police department approval. (See *People v. DePriest*, at p. 40 [finding no due process violation where police did not authorize vehicle’s release].) The trial court correctly concluded there was no bad faith on the part of the police.

Appellant also challenges the trial court’s decision not to instruct the jury about failure to preserve the Durango. “Although a jury instruction may be a viable response to a due process violation, the trial court is under no obligation to so instruct the jury when there is no violation.” (*People v. Lucas*, *supra*, 60 Cal.4th at p. 222; see also *People v. Cooper*, *supra*, 53 Cal.3d at p. 811.) There was no due process violation and hence no need to provide an ameliorative jury instruction on evidence preservation.

Substantial evidence supported both the trial court's denial of appellant's *Trombetta/Youngblood* motion and his request for a jury instruction. We affirm.

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.