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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re M.S., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B282152
(Super. Ct. No. TJ22510)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

M.S. appeals the juvenile court's order sustaining a delinquency petition alleging that appellant committed vehicular manslaughter with gross negligence (Pen. Code, § 192, subd. (c)(1); Welf. & Inst. Code, § 602). Appellant was declared a ward of the court and placed home on probation for six months. She contends the evidence is insufficient to support the finding that she acted with gross negligence. We affirm.

STATEMENT OF FACTS

On the afternoon of August 17, 2015, Dennis Ramos was driving his car in the number 1 lane on the southbound 110 Freeway in Los Angeles when he noticed he was being tailgated by a white Lexus driven by appellant, who was then 17 years old. Ramos was traveling approximately 55 to 60 miles per hour and another vehicle was in front of him. After tailgating Ramos for a minute or two, appellant switched lanes, sped ahead of Ramos at a speed of about 65 to 75 miles per hour, and eventually cut back into the number 1 lane directly in front of Ramos.

As Ramos was approaching the freeway's intersection with the 91 Freeway, he knew from prior experience that there would be a "bottleneck" where "traffic either [became] slow or it [came] to almost a stop-and-go to say the least." The Metro Express Lane ends at that point and the fast lane "descend[s] downward . . . so you can see at least over 1,000 feet" ahead.

Although there were no other vehicles for a substantial distance in front of appellant, Ramos could see from brake lights that all the cars ahead of them near the 91 Freeway intersection were stopped. Appellant, however, "took off" and "within moments" slammed into the back of a Chevy Spark that was stopped in the number 1 lane. Appellant's Lexus veered to the right a few feet before the point of impact and the brake lights were activated two or three seconds prior to the collision. The impact of the collision pushed the Spark forward and caused the two vehicles in front of it to be hit.

Ramos pulled up and parked behind the Spark. Appellant got out of her vehicle and appeared "traumatized." Ramos told appellant to sit down on the curb and she complied. Ramos then approached the Spark and saw the driver, Herbert Alberts,

unconscious and slumped over on the front passenger seat. Ramos called 911.

Los Angeles Police Department Sergeant Robin Petillo came upon the accident while driving on the freeway. Alberts was removed from his vehicle and Sergeant Petillo performed CPR on him. Alberts was transported to the hospital and died of his injuries four days later. The physician who treated Alberts at the hospital and the medical examiner both concluded that the cause of death was an atlanto-occipital dislocation, in which his skull had separated from his spine and rendered him unable to control his breathing.

California Highway Patrol (CHP) Officer Stacy Lee spoke with appellant at the scene. Appellant stated that she was driving approximately 65 to 75 miles per hour in the number 1 lane and “looked away for a second,” then looked back toward the road and saw that traffic was stopped 50 feet ahead of her.

CHP Officer Thomas Bomar testified as an accident reconstruction expert. Based on data obtained from the airbag control module (ACM) on appellant’s vehicle, Officer Bomar opined that appellant was travelling at approximately 75.8 to 78 miles per hour at the time of the collision. The ACM data also showed that appellant’s vehicle had decelerated from 73.3 miles per hour to 59.7 miles per hour in 0.1 seconds. From this data, Officer Bomar opined it was impossible for a driver to apply the brakes to slow down a vehicle so quickly, such that any diminished speed was likely caused by the collision rather than braking.

Based on the ACM data from Alberts’ vehicle, Officer Bomar opined that Alberts was travelling at approximately 14 miles per hour five seconds before the collision, and was applying

his brakes and had slowed down to a complete stop at the time of the collision.

Two experts testified on appellant's behalf. A forensic pathologist opined that the lack of injuries across Alberts' chest indicated that the horizontal strap of his seatbelt had either failed or was being improperly worn at the time of the accident. A mechanical engineer specializing in accident reconstruction opined that appellant's vehicle was travelling at approximately 60 to 70 miles per hour when it was 42 to 48 feet from the collision and was travelling at a speed of 59 to 70 miles per hour when the collision occurred.

DISCUSSION

Appellant contends the evidence is insufficient to support the juvenile court's finding that she acted with gross negligence. We conclude otherwise.

In reviewing appellant's claim, "we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal. Under this standard, the critical inquiry is 'whether, after reviewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] An appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence--that is, evidence which is reasonable, credible, and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citations.]" (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) In conducting this review, "we are in no position to weigh any conflicts or disputes in the

evidence. The juvenile trial court was the trier of fact and the sole judge of the credibility of witnesses; we are not. Even if different inferences can reasonably be drawn from the evidence, we cannot substitute our own inferences or deductions for those of the trial court.” (*Id.* at p. 1373.) Accordingly, our review “begins and ends with a determination of whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, which will support the decision of the trier of fact. [Citations.]” (*Ibid.*)

“Gross vehicular manslaughter is defined as ‘driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.’ ([Pen. Code,] § 192, subd. (c)(1).) ‘The finding of an operator’s gross negligence in driving a motorcar, when supported by substantial evidence, is conclusive upon the reviewing court and can be reversed only when that court becomes convinced by the evidence that freedom from gross negligence was so clearly established that reasonable minds could not differ upon the question.’ [Citation.]” (*People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1171.)

There is ample evidence to support the court’s finding that appellant acted with gross negligence. As the juvenile court found, “[n]o other interpretation of this incident came before the court other than [that appellant] was driving at 60 miles per hour or more; that she came to the crest of the ramp; and for an entire half a mile, minus the short period of time at which the brakes were applied, she was not paying attention. To me, that’s grossly negligent. The combination of the speed on our freeways where it’s just common knowledge that traffic is stop and go. If it’s not

stop and go at this moment, in two moments, it could turn into stop and go which is why we need to keep our eyes on the road. And for such a long period of time not to be paying attention to what's going on in front on a Los Angeles freeway at that speed, to me, that's gross negligence. To me, that is a reckless disregard for human life."

In challenging the court's finding of gross negligence, appellant disregards the standard of review. The evidence, when viewed in the light most favorable to the judgment, establishes that appellant was tailgating Ramos shortly prior to the collision, recklessly changed in and out of lanes before cutting in front of Ramos, then "took off" at an excessive rate of speed. There is also evidence that appellant was driving up to 78 miles per hour when she collided with Alberts' vehicle, even though she would have been able to see that traffic was slowing or stopping over 1,000 feet ahead of her. (See, e.g., *People v. Nicholas, supra*, 8 Cal.App.5th at p. 1172 [evidence supported finding of gross negligence where "[d]efendant was driving at about 80 miles per hour and approaching a typical freeway traffic jam" and "there was no evidence defendant took any evasive actions prior to the impact, which suggests she was oblivious to what was right in front of her"].) Although appellant asserts that witnesses other than Ramos "provided inconsistent accounts of the traffic conditions immediately before the accident," the resolution of any conflicts or disputes in the evidence was the sole province of the juvenile court. (*In re Ryan N., supra*, 92 Cal.App.4th at pp. 1372-1373.) Our review is limited to the determination whether there is *any* evidence to support the court's finding (*ibid.*), and such evidence exists here.

DISPOSITION

The juvenile court's order sustaining the section 602 petition is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Donna Q. Groman, Judge
Superior Court County of Los Angeles

Elana Goldstein, under appointment by the Court of
Appeal, for Defendant and Appellant.

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