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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILIP KEN TRUJILLO,

Defendant and Appellant.

2d Crim. No. B284347  
(Super. Ct. No. 15F-06754)  
(San Luis Obispo County)

Philip Ken Trujillo was driving a tractor-trailer rig with a noisy air leak that disabled the low gears of his transmission. He made a slow turn in front of oncoming traffic on a highway; he did not wait for cars to pass because stopping posed a risk that he would be unable to get the truck moving again. As he made his turn across traffic, his trailer was struck by an approaching minivan. The roof of the minivan was sheared off as it went under the trailer; all four occupants were killed. Appellant was convicted by jury of four counts of gross vehicular manslaughter and sentenced to six years in prison. (Pen. Code, § 192, subd. (c)(1).)

Appellant contends that the trial court abused its discretion when it refused to permit him to introduce evidence of (1) the toxicology results for the minivan driver and (2) the condition of the minivan's brakes. The court found that appellant's driving was the proximate cause of the collision, and the condition of the minivan and its driver were not superseding, intervening events. We conclude that the court acted within the bounds of its discretion and affirm the judgment.

### **FACTS**

Appellant was driving a 65-foot tractor-trailer rig northbound on U.S. 101 at about 6:00 p.m. on Christmas eve, 2014. Though it was dark, the roadway was dry and visibility was good. Traffic was heavy.

Highway 101 permits cross-traffic at Wellsona Road in Paso Robles, the site of the collision. Appellant entered the left turn lane to go to a truck stop on Wellsona, west of the highway. A CHP officer testified that drivers turning left must yield to southbound traffic that is close enough to constitute a hazard.

Arturo Sandoval was following immediately behind appellant and witnessed the events. He saw three southbound cars grouped together, approaching the intersection. He also observed that appellant did not stop before crossing the intersection. Sandoval was surprised, saying "[i]t seemed to me that any other person would have stopped" because the three southbound cars "were really close." Sandoval appreciated the danger and would not have turned so close to oncoming traffic, even in a car, because he would be unlikely to make it.

Sandoval realized that a collision was about to occur, as appellant's truck was straddling the southbound lanes. Two cars took evasive action around the back of appellant's truck, coming

very close to Sandoval's car in the left turn lane. He saw sparks and a "little tiny piece of a car come out" from under appellant's trailer; he thought it was a convertible because the top was completely off.

A nearby sheriff's deputy heard the collision. Arriving minutes later, he found a minivan with its roof sheared off. Driver Crystal Reuck and her three passengers were killed.

CHP Officer Michael Schad was the primary investigator. He saw a 30 to 50 foot debris field covering the southbound side of U.S. 101. The only marks in the roadway left by the minivan were beyond the point of impact; they did not result from braking. Reuck did not appear to have changed lanes before impact.

Schad met with Sandoval on January 6, 2015. Sandoval said he went home after the collision because he was in shock. He recalled the incident clearly, stating that appellant slowed to two miles per hour but did not stop as he made the left turn at the intersection. Schad opined that two miles per hour is an unusually slow speed for executing a left turn. Sandoval was formerly a commercial truck driver and knew that appellant would not clear the southbound lanes in front of the three cars.

Sandoval stated that he first saw the minivan near a "truck crossing" sign located 562 feet before the intersection. Schad testified that if Reuck was driving at the speed limit of 65 miles per hour, she covered 90-100 feet per second and reached appellant's truck in five seconds from the "truck crossing" sign. Sandoval also said that the minivan was the front car in the "slow" lane, traveling side-by-side with a car in the "fast" lane. Two cars--the one in the "fast" lane and another behind Reuck--turned hard left to go around the back of appellant's trailer.

Appellant told an officer that he pulled into the left turn pocket and came to a stop for one minute, waiting for traffic to pass. After traffic cleared he began to cross at 25 miles per hour, seeing only “a car way back there,” which he clarified was near a call box located 996 feet north of the intersection. He felt an impact when he was almost all the way across.

Timothy Maxwell is a CHP commercial enforcement officer. At the accident scene, he saw damage at the midpoint of appellant’s trailer. Appellant said he had mechanical problems before the collision because the temperature gauge was “hot” and the mechanic’s light was lit. While inspecting appellant’s rig, Maxwell heard a “really loud hissing noise” from an air leak. Anyone driving the truck could hear it and know something was not right. Air leaks are a significant problem in a truck because they can cause the brakes to lock. Appellant denied noticing any air loss or loss of power.

Maxwell terminated his inspection because appellant was inattentive. Appellant was on the telephone, receiving what sounded like instructions for clearing the truck’s fault codes from the onboard computer. Maxwell was concerned that appellant was trying to delete information regarding his speed, engine revolutions per minute, and any mechanical problems he was experiencing before the collision.

Before the accident, appellant took a 10-hour rest break in San Luis Obispo. Afterward, he began driving north on U.S. 101 at 3:30 p.m. to Las Vegas via Barstow. He ended up on Highway 41, a curvy road not authorized for big rigs. It took him nearly three hours to get to Wellsona Road. In that relatively short distance, his driver log showed that he stopped nine times; he was not able to explain all the stops. During his drive, appellant

telephoned his employer; 15 minutes before the collision, appellant called a “driver breakdown” number.

An investigation showed that appellant was experiencing mechanical problems with his rig before the accident. Larry Iunker is a CHP motor carrier specialist who investigates accidents. While examining appellant’s truck, he observed that the air-brake system was not working correctly and the temperature gauge was at the highest point. From inside the cab, he could hear air loudly escaping from a leak.

Iunker discovered that an air line leak had disabled the first five gears of the transmission. He drove the truck and had to start in sixth gear. From a stop, it is difficult for a truck to accelerate without the lower gears. This is a serious problem that made the truck unsafe to operate. A leak of that severity causes a buzzer to sound in the truck cab. Iunker believed that the leak existed before the collision and was not caused by it.

Apart from the transmission air leak, Iunker found an emission system leak that can cause overheating and loss of power, plus a leak in the air-brakes. A truck driver would document these defects in a mandatory pre-trip inspection, but appellant did not note any problems in his log.

A towing company manager with expertise in trucks arrived at the accident scene. When he started the engine of appellant’s truck to remove it from the roadway, he heard air leaking from beneath the stick shift; the brakes would not release and all the warning lights were on. He could not move the truck. He saw that the air line to the transmission was almost completely severed, a common problem because the line rubs against the transmission. He wrapped tape around the line to release the brakes to move the truck to a nearby parking lot. It

was missing the first five gears and had to be started in sixth gear. He later towed the truck to an impound yard, and would not feel comfortable driving it on a highway.<sup>1</sup>

A traffic study conducted after the accident showed that tractor-trailers that did not stop in the left turn lane and rolled through the intersection onto Wellsona Road at 13 or 14 miles per hour averaged 7.32 seconds to clear the intersection. Trucks that stop before making the left turn took 9.18 seconds to clear the intersection. If appellant was travelling two miles per hour (as stated by eyewitness Sandoval) he would need 50 seconds to clear the intersection. The officer performing the study opined that it was not safe for appellant to turn in front of Reuck's car and his doing so caused the collision. A video recording from the nearby truck stop shows appellant's truck in the left turn lane south of the intersection (the intersection itself is not visible); 13 seconds later the demolished minivan slides into view, south of the intersection.

Appellant's accident reconstruction expert stated that Reuck took no evasive action by braking or swerving. Assuming she was 700 feet away and reacted within one to two seconds of seeing appellant's truck, she could have stopped in 5.7 seconds. The expert acknowledged that this would put the onus on Reuck to avoid hitting appellant, who was in her lane. He did not take into account that appellant had mechanical problems and traversed the intersection at two miles per hour, or that Reuck was boxed in by other cars.

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<sup>1</sup> The manager of the impound yard also had to start appellant's truck in sixth gear; he would not drive it on a highway in that condition.

## DISCUSSION

### *1. Elements of Gross Vehicular Manslaughter*

The jury was instructed that appellant is guilty of gross vehicular manslaughter if he (1) drove a vehicle; (2) committed an infraction; (3) committed the infraction with gross negligence; and (4) caused a person's death. (CALCRIM No. 592; Pen. Code, § 192, subd. (c)(1); *People v. Nicolas* (2017) 8 Cal.App.5th 1165, 1173.) The jury was also instructed that appellant committed an infraction by making an unsafe left turn.<sup>2</sup>

On gross negligence, the jury was instructed that it “involves more than ordinary carelessness, inattention, or mistake in judgment” and is shown if the defendant “acts in a reckless way that creates a high risk of death or great bodily injury; AND . . . [a] reasonable person would have known that acting in that way would create such a risk. [¶] In other words, a person acts with gross negligence when the way he . . . acts is so different from how an ordinarily careful person would act in the same situation that his . . . act amounts to disregard for human life or indifference to the consequences of that act.” (CALCRIM No. 592; *People v. Bennett* (1991) 54 Cal.3d 1032, 1036.) The crime does not require an intent to harm; instead, the focus is whether the defendant drove in an unlawful manner. (*People v. Jones* (1985) 164 Cal.App.3d 1173, 1182.)

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<sup>2</sup> “The driver of a vehicle intending to turn to the left . . . upon a highway . . . shall yield the right-of-way to all vehicles approaching from the opposite direction which are close enough to constitute a hazard at any time during the turning movement, and shall continue to yield the right-of-way to the approaching vehicles until the left turn . . . can be made with reasonable safety.” (Veh. Code, § 21801, subd. (a).)

On causation, the jury was instructed that “[a]n act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. . . . [¶] An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor. However, it does not have to be the only factor that causes the death. [¶] The failure of another person to use reasonable care may also contribute to a death. If, however, the defendant’s act was a substantial factor in causing the death, then the defendant is legally responsible for the death even though another person may have failed to use reasonable care.” (CALCRIM No. 240, as modified)

*2. Appellant’s Gross Negligence Caused the Fatal Collision*

Overwhelming evidence shows that appellant’s act was a substantial factor in causing the victims’ deaths. Sandoval saw him turn left, without stopping, after slowing to two miles per hour when “really close” cars approached at full speed. An expert testified that it would take appellant 50 seconds to cross the intersection, yet Reuck had only five seconds to stop. Sandoval immediately perceived that a collision was inevitable, stating that “any other person would have stopped” because a car could not cross safely, let alone a 65-foot truck.

Video evidence shows appellant’s truck in the turning lane, south of the intersection. Only 13 seconds later the demolished minivan is seen sliding on the roadway, south of the intersection. The video demonstrated that appellant did not stop for one minute before crossing the highway, as he claimed to the CHP.



Although appellant told a CHP officer that he nearly cleared the intersection, the evidence showed that his trailer was straddling the highway because the impact damage was at its midpoint. The evidence belied appellant's claim that he waited for traffic to pass then traversed the highway at 25 miles per hour: he could not have been traveling that speed because his truck lacked the first five gears and could barely accelerate from a stop. The mechanical defect existed before the accident and made the truck unsafe to operate. An air leak caused the brakes to lock, made a noise that was audible inside the truck, and affected appellant's ability to operate the vehicle. Nonetheless, he continued to drive the defective truck until the accident.

The record supports a finding that appellant acted with gross negligence, i.e., with "disregard for human life or indifference to the consequences of [his] act." (CALCRIM No. 592.) The likelihood of a high-speed collision while appellant slowly crossed a busy highway at night was not remote or trivial; it was a consequence which could reasonably be contemplated given the proximity of Reuck's car. But for appellant's conduct, no collision would have occurred.

Though appellant's expert blamed Reuck for not reacting to the danger, "the actions or failings of the victims or third parties are of no consequence." (*People v. Marlin* (2004) 124 Cal.App.4th 559, 569.) It is "a flawed premise" that a defendant is not guilty of a crime because the driver of the car he struck "might have avoided the accident." (*Ibid.*) It is not germane whether the victim was speeding, inattentive, experienced "brake fade," or failed "to maneuver around" the defendant to avoid a collision when he drove into her lane, because "a crime victim's contributory negligence is not a defense" once it is shown that the

defendant's conduct was the proximate cause of deaths or injuries. (*Id.* at pp. 568-570.) Reuck's failure or inability to react in five seconds is not "so unusual, abnormal, or extraordinary" that it could constitute a sole or superseding cause that exonerated appellant for his role in causing the accident. (*People v. Schmies* (1996) 44 Cal.App.4th 38, 52.)

3. *The Condition of Reuck and Her Vehicle Was Irrelevant*

Appellant contends that his constitutional right to present a defense was violated when the court denied him the opportunity to present at trial (1) Reuck's post-mortem toxicology report and (2) evidence regarding the minivan brakes. Appellant forfeited his claim of federal constitutional error by failing to raise it below. In any event, application of "ordinary rules of evidence do[es] not impermissibly infringe on the accused's right to present a defense." [Citation.] (*People v. Blacksher* (2011) 52 Cal.4th 769, 821.)

The court "has broad discretion in determining relevancy, but it cannot admit evidence that is irrelevant or inadmissible" and the burden is on the proponent to establish relevance with an adequate offer of proof. (*People v. Blacksher, supra*, 52 Cal.4th at pp. 819-820.) The ruling is reviewed for an abuse of discretion. (*People v. Riggs* (2008) 44 Cal.4th 248, 290.)

a. *Toxicology Report*

Appellant asserts that a toxicology report would have allowed the jury to conclude that drugs Reuck ingested were a superseding cause of the collision and the four deaths. In seeking to admit the evidence, defense counsel argued that Reuck had a high level of methamphetamine in her blood.<sup>3</sup> The prosecutor

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<sup>3</sup> He also cited a suicide note penned by Reuck's passenger, medical records showing Reuck's history of depression and

replied that Reuck did not cause the collision, which was the natural consequence of appellant's unsafe turn in front of traffic at night. The court excluded the evidence, stating "I don't find that the conduct, the condition of Ms. Reuck is a superseding, intervening event."

As discussed in section 2, *ante*, appellant's slow turn in front of cars precipitated the collision. "[A] defendant whose conduct was a proximate cause of harm is not absolved of responsibility because another person's conduct, negligent or otherwise, is also a substantial or contributing factor in causing the harm." (*People v. Brady* (2005) 129 Cal.App.4th 1314, 1328 (*Brady*).) In *Brady*, a defendant who recklessly set a forest fire was convicted of causing the deaths of pilots who collided in midair while fighting the fire. The deaths were a foreseeable consequence of Brady's conduct as he "could reasonably anticipate that aircraft would be summoned to extinguish the fire and that a fatal collision might result. The question is not whether Brady could reasonably anticipate other causes that might also contribute to the collision." (*Brady*, at p. 1334.)

Brady argued that the court erred by excluding evidence of a pilot's toxicology report; however, he made no offer of proof that the pilot's blood-alcohol level--while higher than permitted by the FAA--had an appreciable effect on his flying ability and was a

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suicide attempts, her prior motor vehicle accident, and her homelessness. He stated, "When you combine all of these facts together--she's suicidal, she's high on meth, it's Christmas Eve, she's homeless, she's got an ex-boyfriend that's also suicidal--it doesn't take a whole lot of imagination to believe that this was somebody who was the proverbial ticking time bomb waiting for any opportunity to kill herself and perhaps not really concerned about who else might be killed with her."

substantial factor in causing the collision. (*Brady, supra*, 129 Cal.App.4th at p. 1332.) The same deficiency appears here. Appellant did not offer to prove that drugs had an appreciable effect on Reuck's driving ability and was a substantial factor in causing the collision.

Appellant argues that Reuck's drug use was an "independent intervening cause" that "breaks the chain of causation" and absolves him of liability because it was entirely "disconnected" from his own conduct. (*People v. Schmies, supra*, 44 Cal.App.4th at p. 49.) He must, however, show that his own conduct "was *not* a substantial factor" and that Reuck's conduct was the sole or superseding cause of the collision. (*People v. Wattier* (1996) 51 Cal.App.4th 948, 953.)

Appellant offered no proof to support his theory. He did not contend that his own conduct was not a substantial factor in causing the accident. No expert was slated to testify that the drugs Reuck took were the sole cause of the accident. Instead, appellant intended to use the toxicology report to argue to the jury that Reuck intentionally rammed the truck at full speed. (See fn. 3, *ante*.) His trial brief conjectured that Reuck's drug use and mental health issues "likely caused her to commit suicide."

Reuck was traveling without incident before appellant turned in front of her vehicle. It is pure speculation that she made a conscious decision--in the five seconds between appellant's entry into the intersection and impact--to kill herself and her friends. Apart from conjecturing about a suicide, appellant made no offer of proof that Reuck was too impaired to drive. As a result, the toxicology report was irrelevant to the issue of causation. (See *People v. Schmies, supra*, 44 Cal.App.4th at pp. 51, 55 [CHP officers' failure to follow pursuit rules is

irrelevant to whether the defendant caused a fatal collision by trying to evade arrest]; Evid. Code, § 354, subd. (a) [judgment cannot be reversed unless an offer of proof was made that excluded evidence is relevant].) The only purpose of offering the report was to denigrate the victim's character. (*Id.* § 352.) It was properly excluded.

*b. The Condition of the Minivan's Brakes*

Appellant claims that the poor condition of Reuck's brakes was a superseding cause of the collision. "However, it is unnecessary to consider whether evidence of poor maintenance might reach this threshold because defendant's proffered evidence simply was not sufficient to show that the accident was caused by a mechanical malfunction." (*Brady, supra*, 129 Cal.App.4th at p. 1337.)

There is no evidence that faulty brakes caused the collision. Officer Schad testified that the only marks in the roadway left by the minivan occurred post-impact, when Reuck was already dead; there were no skid marks from pre-impact braking. Appellant's expert testified that Reuck did not apply her brakes. Because the evidence is undisputed that Reuck never braked, the condition of her brakes is irrelevant. (*Brady, supra*, 129 Cal.App.4th at p. 1337.)

*4. Appellant Was Not Deprived of Effective Assistance*

Appellant asserts that counsel was ineffective because he failed to make alternative offers of proof to explain why Reuck "did not stop from a farther distance," although he argued and presented expert evidence in an effort to show that she "was at fault" and "should have been able to stop or avoid the collision."

As discussed in section 2, *ante*, "the actions or failings of the victims or third parties are of no consequence" to the issue of

appellant's guilt. (*People v. Marlin, supra*, 124 Cal.App.4th at p. 569.) But for his reckless conduct in driving a truck lacking acceleration power in front of oncoming traffic on a highway at night, this collision would never have occurred. Appellant is accountable even if Reuck "might have avoided the accident." (*Ibid.*) Trial counsel's performance was not deficient, because additional evidence speculating about the cause of Reuck's failure to take avoidance maneuvers was not relevant once it was shown that appellant's conduct was the proximate cause of the collision and deaths. (*Ibid; Brady, supra*, 129 Cal.App.4th at p. 1328.)

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Michael L. Duffy, Judge

Superior Court County of San Luis Obispo

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Wayne C. Tobin, 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, Senior Assistant  
Attorney General, Margaret E. Maxwell, Supervising Deputy  
Attorney General, and Thomas C. Hsieh, Deputy Attorney  
General, for Plaintiff and Respondent.