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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. ALEJANDRO TRASLAVINA, Defendant and Appellant.	B268597 (Los Angeles County Super. Ct. No. GA091092)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stanley Blumenfeld, Judge. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After drinking alcohol, Alejandro Traslavina was involved in a high-speed, two-car collision that killed a passenger in the other car and seriously injured the other driver and another passenger. A jury convicted Traslavina of gross vehicular manslaughter while intoxicated and driving under the influence of alcohol causing bodily injury. We affirm the judgment over Traslavina's challenges to the sufficiency of the evidence, the admission of blood alcohol evidence, and the warrantless administration of a blood test.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Traslavina's Drinking and Driving Before the Collision*

On March 17, 2013 Traslavina spent the day in Montebello with his cousins, Luis Gabriel Perez (Gabriel) and Daniel Abel Perez (Daniel).[1] Traslavina and Gabriel played golf in the morning. Gabriel had some beer and noticed Traslavina was drinking something, but he did not know what it was. Later, they attended a family barbecue, and Gabriel did not know whether Traslavina had anything to drink there. Daniel, who was also at the barbecue, did not see Traslavina drink anything.

After the barbecue, Traslavina took his cousins to a restaurant in his Nissan Infiniti and arrived at approximately 8:30 p.m. Traslavina ordered a double vodka drink, and the

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[1] Because the Perez brothers have the same last names, we refer to them as Daniel and Gabriel. It appears Luis Gabriel Perez was called by his middle name.

cousins had beer. They drank these between 8:46 and 9:19 p.m. None of them ate any food.

Traslavina then drove his cousins to a restaurant in Monterey Park. Traslavina traveled on the 60 Freeway, exited at Garfield Avenue, and drove north on Garfield Avenue.

Gilbert Ramirez was driving north on Garfield Avenue between 9:00 and 9:30 p.m. In his rearview mirror he saw a Nissan Infiniti approaching at a high rate of speed. The car narrowly missed Ramirez's truck before it changed lanes and nearly struck some parked cars. Ramirez stated, "I've got a big truck and it made my truck shake. That's how close he was from hitting us. You know how we drive on a freeway and a semi passes you and it makes your car shake, that's what it did." The car screeched to a stop at a red light and appeared to be moving back and forth, as if the driver was giving the car gas while pressing the brakes. When the light turned green, the car rapidly accelerated and drifted into the adjacent lane. The car then "took off at a high rate of speed."

Shortly before 9:30 p.m., Amanda Rodriguez saw the Infiniti pass her on the right on Garfield Avenue at a "really dangerous speed." Rodriguez heard loud music and screaming coming from the Infiniti, and she saw the three occupants "jumping up and down in the car" as it "flew past" her. At the red light on Garvey Street, the car braked to a stop into the crosswalk and sped off when the light turned green. It then crashed into another vehicle under the 10 Freeway.

Mark Currie, who moved from Ohio to California in 1979, was putting gas in his car at a gas station on the corner of Garfield Avenue and Hellman Street. He heard the "whine" of a car engine revving up and saw the Infiniti speeding through the

intersection. Currie stated, "In Ohio we have a term called ba[t] out of hell, and it is basically very, very fast." The car continued under the 10 Freeway, and there was the sound of a "very large crash."[2]

B. *The Collision*

Mercy Lee was driving her two brothers, Hsueh Chien Wang and Hsueh Cheng Wang, in her SUV on the 10 Freeway. After exiting at Garfield Avenue, Lee signaled to make a left turn, saw no approaching vehicles, turned left, and moved into the number one lane of Garfield Avenue, traveling at 20 to 25 miles per hour. As she was driving under the 10 Freeway, Traslavina's car struck her from behind. Lee lost control of the SUV and struck two cement pillars supporting the freeway. The collision involved three impacts: first the Infiniti struck the SUV, then the SUV hit the freeway pillars, and finally the SUV collided again with the Infiniti. Lee and Hsueh Cheng Wang suffered serious injuries. Hsueh Chien Wang died at the scene.

Before the police arrived, Traslavina used his cell phone to call his friend, Alhambra Police Corporal Wilfredo Ruiz. Traslavina told Ruiz he was driving when another vehicle cut in front of him causing a collision, and he asked Ruiz what he should do. Ruiz advised Traslavina to wait for the police and not to perform any field sobriety tests. Traslavina agreed to follow Ruiz's advice. According to Ruiz, Traslavina did not sound intoxicated and said he had one drink before the collision.

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[2] Ramirez, Rodriguez, and Currie each called the police emergency operator to report the speeding Infiniti.

C. *The Investigation, Arrest, and Blood Test*

Several Alhambra Police Officers responded to the scene. Lieutenant Gabriel Ponce was the first to arrive. He opened the door of Traslavina's car and smelled alcohol. Lieutenant Ponce ordered Traslavina and his cousins out of the car after they assured him they were not injured. While Gabriel and Daniel quickly complied, Traslavina did not follow Lieutenant Ponce's repeated commands. Instead, Traslavina remained in the car "manipulating" his cell phone. Lieutenant Ponce took the cell phone and told Traslavina to sit on the curb.

Lieutenant Ponce testified Traslavina "had kind of a blank look on his face . . . coupled with the odor of alcoholic beverage, it appeared as though he had been drinking some type of alcoholic beverage and was already at that point [in] my mind . . . possibly under the influence." He noticed Traslavina's speech was "deliberate," "slower than a normal tone or someone would talk normally," and "slightly slurred," and his "steps were slow and deliberate, which is another indicator of someone that may be under the influence of alcohol . . . ." Lieutenant Ponce concluded Traslavina was "under the influence of alcohol" because of Traslavina's "symptomology and the odor of alcoholic beverage emitting from him." Based on Traslavina's objective symptoms of intoxication and his involvement in the collision, Lieutenant Ponce also concluded Traslavina was unable to operate a motor vehicle safely.

Officer Byron Garay interviewed Traslavina at the scene. Traslavina said he was driving 35 miles per hour when Lee's SUV changed lanes in front of him without signaling. Traslavina said he could not stop in time and collided with the SUV. While speaking with Traslavina, Officer Garay noticed Traslavina had

slurred speech and bloodshot, watery eyes, was uncooperative, and had the "odor of an alcoholic beverage emitting from his breath." In light of these symptoms, Officer Garay informed Traslavina that he was going to conduct an investigation for driving under the influence. When asked if he had anything to drink, Traslavina answered he had one vodka drink approximately one hour before the collision.

Three other officers at the scene confirmed the observations of Lieutenant Ponce and Officer Garay. Officer Garay's partner, Felix Huezo, observed that Traslavina had red, "glossy eyes," a "little bit of slurred speech," and "a slight smell of alcohol on his breath" at a distance of two to three feet. Officer Edward Delgadillo noticed Traslavina's eyes were bloodshot, watery, and "really teary." Officer Bill Rongavilla, who transported Traslavina to the hospital, testified Traslavina had "bloodshot, watery eyes" and, as he repeatedly asked why he had been arrested, slurred speech.

The officers asked Traslavina to submit to field sobriety tests. Traslavina refused. Traslavina also declined to say when he had last eaten or slept. Officer Garay concluded that, based on Traslavina's "symptoms of alcohol intoxication" and "the severity of the traffic collision," Traslavina was possibly under the influence of alcohol and "wasn't able to operate a motor vehicle at that point." Officer Garay arrested Traslavina at 10:40 p.m. for driving under the influence of alcohol.

Traslavina refused to provide a breath or blood sample. Lieutenant Ponce had officers transport him to the hospital for an involuntary blood test. Lieutenant Ponce believed the Department of Motor Vehicles required a person arrested for driving under the influence to provide a blood sample. At the

hospital, the nurses informed the transporting officers that hospital personnel did not perform nonconsensual blood tests. The police took Traslavina to the police station, where a phlebotomist drew his blood at 1:48 a.m. A subsequent analysis of the sample determined Traslavina had a blood alcohol content of .10 percent at that time.

D. *The Charges*

The People charged Traslavina with gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a)), driving under the influence of alcohol causing bodily injury (Veh. Code, § 23153, subd. (a)), driving with a blood alcohol content of .08 percent or more and causing injury (Veh. Code, § 23153, subd. (b)), and murder (Pen. Code, § 187, subd. (a)). The People alleged Traslavina had proximately caused bodily injury and death to more than one victim (Veh. Code, § 23558), personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)), and willfully refused to submit to a chemical test (Veh. Code, §§ 23577, 23578, 23538, subd. (b)(2)).

Before trial, the court denied Traslavina's motion to suppress the result of the warrantless blood test. During trial, the court granted motions by counsel for Traslavina to dismiss the count for causing injury while driving with a blood alcohol content of .08 percent or more and to strike the allegation Traslavina had willfully refused to submit to a chemical test. Trial proceeded on the remaining counts and allegations. The parties stipulated that Lee and her brothers suffered great bodily injury or death within the meaning of Penal Code section 12022.7, subdivision (a), and Vehicle Code section 23558.

E. *The Prosecution's Experts on Blood Alcohol Content and Accident Reconstruction*

The prosecution's theory, presented through expert witnesses, was Traslavina had consumed more alcohol than he reported to police. Thus, when the collision occurred, Traslavina was under the influence of alcohol, and his impaired driving caused the accident.

Lauren Lewis, a forensic laboratory specialist, gave his opinion that a person with a blood alcohol content of .05 percent is too impaired to safely operate a motor vehicle.[3] While such a person may not yet be physically impaired and can still satisfactorily perform field sobriety tests, he or she is mentally impaired. A blood alcohol content of .05 percent impairs a person's judgment, attention, information processing, and reaction time, thus limiting the person's ability to drive safely.

Lewis testified that Traslavina's blood alcohol content of .10 percent reflected the amount of alcohol in Traslavina's blood at 1:48 a.m., the time of the draw, and it did not account for any alcohol burned off by the body or alcohol still in the digestive tract. Traslavina's blood alcohol content at the time of the collision could not be calculated, however, because not enough time had elapsed after his purported last alcoholic drink. Because Traslavina was still absorbing the alcohol, his blood alcohol content was still rising.

In response to hypothetical questions, Lewis stated a man weighing 172 pounds[4] would have to consume 3.7 standard

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[3] Lewis acknowledged on cross-examination his opinion was a minority view and most experts put the figure at .08 percent.

drinks[5] for his blood alcohol content to measure .10 percent, three standard drinks for his blood alcohol content to measure .08 percent, and 1.8 standard drinks for his blood alcohol content to measure .05 percent. Lewis determined that, if the same man consumed a double vodka drink (two standard drinks) between 8:55 and 9:15 p.m., had his blood drawn at 1:48 a.m., and did not consume any drinks in the interim, then his blood alcohol content would not measure more than .02 percent. Lewis concluded that, because much of the alcohol would have been eliminated from the man's body between 9:15 p.m. and 1:48 a.m., the man must have consumed more than a double vodka drink to have a .10 percent blood alcohol content at 1:48 a.m.

Martin Lambrecht, a product safety manager for Nissan, testified he investigates crashes involving Infiniti cars, like the model driven by Traslavina. Traslavina's Infiniti was equipped with an Event Data Recorder (EDR), which records certain crash data. Where, as here, an Infiniti is involved in two impacts, the EDR's crash data from the second impact overwrites the data from the first impact.

According to Lambrecht, the EDR crash data showed that six seconds before the second impact the Infiniti's speed was 90 miles per hour, at the time of the first impact the Infiniti's speed was 0 miles per hour, and then two seconds before the second impact the Infiniti's speed was 25 miles per hour. The

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[4] The parties stipulated Traslavina weighed 172 pounds when he was arrested.

[5] Lewis defined a standard drink as a 12-ounce beer at five percent alcohol, a five-ounce glass of wine at 12 percent alcohol, or 1.5 ounces of liquor at 40 percent alcohol.

data also showed that five seconds before the second impact, the gas pedal was released and the brake pedal was applied.

Alhambra Police Corporal Rodney Castillo, an accident reconstruction expert, testified the posted speed limits on Garfield Avenue in the area of the collision ranged from 30 to 40 miles per hour. According to Castillo's calculations, the Infiniti was traveling between 80 to 90 miles per hour just before it first struck the SUV, and the SUV then struck the freeway pillars at approximately 30 miles per hour. Castillo noted Traslavina began braking for the first time five seconds before the second impact. Castillo calculated that at 90 miles per hour, the Infiniti was traveling 206 feet per second. Had the speed of the car been 35 miles per hour, it would have been traveling 105 feet per second, and the collision would not have occurred. Castillo concluded the collision was caused by Traslavina's unsafe speed.[6]

F. *The Defense's Experts on Blood Alcohol Content and Accident Reconstruction*

The defense theory was that Traslavina was not under the influence and his driving was not impaired. Traslavina conceded he was traveling faster than the speed limit before the collision, but not 90 miles per hour, and he contended his speed at the time of the collision was 35 to 40 miles per hour. He claimed Lee, who Traslavina said was driving too slow and had changed lanes without signaling, was primarily responsible for the accident.

Dewayne Beckner, a forensic chemist, disagreed with Lewis's "factually invalid" opinion that any person with a blood alcohol content of .05 percent is under the influence. Beckner also

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[6] Castillo acknowledged that, after reviewing only the drivers' statements, he initially believed Lee was at fault.

testified that a man weighing 172 pounds who consumed a double vodka drink between 8:55 and 9:25 p.m. would still be absorbing alcohol into his bloodstream 10 minutes later at 9:25 p.m., and that the man's alcohol absorption level at this point would be very low. According to Beckner, anyone consuming alcohol on an empty stomach would have a peak absorption level two hours later, although the presence of food, stress, or trauma could slow the rate of absorption. Beckner determined that, if a person's blood alcohol content at 1:48 a.m. was .10 percent, it would be .08 percent at 2:53 a.m. the same day. A person with a blood alcohol content of .08 percent would have bloodshot eyes. Traslavina did not have bloodshot eyes in his booking photograph, which was taken at 2:53 a.m.

Herbert Summers, an accident reconstruction expert, calculated the Infiniti was traveling between 35 to 40 miles per hour when it struck the SUV. He also determined the SUV was traveling between 20 and 25 miles per hour when the Infiniti hit it and traveling 30 miles per hour when it hit the freeway pillars. According to Summers, the "perception reaction time" is about two seconds at night. Summers noted it was not possible to see the point of impact from 50 to 60 feet south of the intersection of Garfield Avenue and Hellman Street. Summers calculated that, assuming the SUV was traveling 20 miles per hour when it changed lanes one to two seconds before impact, the two cars would have been only 45 to 120 feet apart, less than three car lengths. If the SUV were traveling 25 miles per hour at the time, the Infiniti would have been only 38 to 105 feet behind the SUV. Based on the two-second perception time, Summers opined the Infiniti began to brake before the SUV started to change lanes.

Summers also stated the EDR crash data should not be accepted as absolutely correct. In this case it showed the Infiniti failed to slow between its first and second impact with the SUV, which Summers believed was unlikely.

G. *Traslavina's Testimony*

Traslavina testified he drank no alcohol at the golf course or at the family barbecue. He stated he drove at 8:30 p.m. with his cousins to the restaurant, where they stayed approximately 45 minutes, and he had one double vodka drink. The drink came in a pint-sized beer glass and appeared to contain more than two ounces of alcohol. Traslavina said he drank no other alcohol that night.

Traslavina acknowledged he was speeding on Garfield Avenue, but thought he was driving 50 to 60 miles per hour. He admitted it was possible he was going faster, but not 80 to 90 miles per hour. Traslavina did not believe he was driving dangerously. According to him, the traffic was light that night. Traslavina denied he was driving in the manner described by Rodriguez, Ramirez, and Currie.

Traslavina testified that at Hellman Avenue there was a rise in the road, which prevented him from seeing the 10 Freeway underpass ahead, so he reduced his speed. As he drove over the crest of the hill, he saw Lee's SUV in the right lane near the underpass. When Lee was approximately two car-lengths ahead of Traslavina, she changed lanes without signaling and struck the front of his car. Traslavina was traveling approximately 35 miles per hour, and he had no time to brake.[7] The SUV hit the

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[7] In their trial testimony, Daniel and Gabriel similarly maintained Lee was at fault for making an unsafe lane change.

freeway cement pillars and bounced back into Traslavina's lane. Even though Traslavina was applying the brakes, his car continued to move forward, striking the SUV a second time.

After the collision, Traslavina telephoned his friend Ruiz to have him call the police for assistance. Traslavina was not worried the police would arrest him because the collision was not his fault. Ruiz advised him not to perform the field sobriety tests. Traslavina cooperated with the drawing of his blood at the police station. He only felt the effects of the double vodka drink after he had been booked into a jail cell that night.

H. *The Verdict and the Sentence*

The jury found Traslavina guilty of gross vehicular manslaughter while intoxicated and driving under the influence causing bodily injury, but found him not guilty of murder. The jury also found true the great bodily injury allegations.

The trial court sentenced Traslavina to the lower term of four years for vehicular manslaughter while intoxicated, a consecutive term of eight months (one-third the middle term of two years) for driving under the influence causing bodily injury, plus one year for the great bodily injury enhancement.

DISCUSSION

Traslavina makes three arguments on appeal. First, he argues there was insufficient evidence he was under the influence of alcohol when the collision occurred and his driving was impaired by intoxication. Second, he contends the trial court abused its discretion in admitting the evidence of his blood alcohol level because it was irrelevant to whether he was driving

under the influence. Finally, he argues the trial court erred in denying his motion to suppress the blood alcohol evidence because it was the result of a warrantless, nonconsensual blood test. We reject all three contentions.

A. *Substantial Evidence Supports Traslavina's Convictions*

1. *Standard of review*

"When the sufficiency of the evidence to support a conviction is challenged on appeal, we review the entire record in the light most favorable to the judgment to determine whether it contains evidence that is reasonable, credible, and of solid value from which a trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] Our review must presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence." (*People v. Zaragoza* (2016) 1 Cal.5th 21, 44.) "'"Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]" [Citation.] A reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support'" the jury's verdict.'" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87; accord, *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) "[T]he relevant inquiry on appeal is whether, in light of all the evidence, '*any* reasonable trier of fact could have

found the defendant guilty beyond a reasonable doubt.'" (*Zaragoza*, at p. 44.) """"The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence."""" (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1104; accord, *People v. Tully* (2012) 54 Cal.4th 952, 1006.)

2. *There was sufficient evidence Traslavina was under the influence of alcohol, which impaired his driving*

The offense of gross vehicular manslaughter while intoxicated is "the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence." (Pen. Code, § 191.5, subd. (a).) Vehicle Code section 23152, subdivision (a), makes it "unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle." Similarly, Vehicle Code section 23153, subdivision (a), makes it "unlawful for a person, while under the influence of any alcoholic beverage, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver."

Vehicle Code section 23152, subdivision (b), makes it "unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle." Similarly,

Vehicle Code section 23153, subdivision (b), makes it "unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver."

The People concede this case involves subdivision (a), not subdivision (b), of Vehicle Code sections 23152 and 23153.[8] To prove a violation of either of these provisions, which is required for a violation of Penal Code section 191.5, subdivision (a), "the People must present evidence the driver's alcohol consumption impaired his or her ability to drive." (*Coffey v. Shiomoto* (2015) 60 Cal.4th 1198, 1211.) Traslavina contends the People failed to meet this requirement. Specifically, Traslavina argues that "a conviction for gross vehicular manslaughter while intoxicated requires a finding by the jury that [he] was either driving while intoxicated or driving under the influence," and "[t]here was no evidence that [he] was legally intoxicated" and "insufficient evidence that [his] driving was impaired by his consumption of alcohol." Acknowledging there was evidence he displayed symptoms of alcohol consumption and had been speeding, Traslavina argues the "real question is whether [his] driving ability was impaired."

A person is under the influence of alcohol, when, as a result of consuming alcohol, "his [or her] physical or mental abilities are impaired to such a degree that he [or she] no longer has the ability to drive his [or her] vehicle with the caution characteristic of a sober person of ordinary prudence under the same or similar

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[8] Vehicle Code section 23140 is inapplicable because it applies to persons under the age of 21.

circumstances." (*People v. Jimenez* (2015) 242 Cal.App.4th 1337, 1354-1355; accord, *McDonald v. Department of Motor Vehicles* (2000) 77 Cal.App.4th 677, 686-687; see *People v. McNeal* (2009) 46 Cal.4th 1183, 1192-1193 [Vehicle Code section 23152, subdivision (a), requires "proof that the defendant was actually impaired by his drinking"]; *Byrd v. Municipal Court* (1981) 125 Cal.App.3d 1054, 1058 ["[t]o be 'under the influence' within the meaning of the Vehicle Code, the liquor or liquor and drug(s) must have so far affected the nervous system, the brain, or muscles as to impair to an appreciable degree *the ability to operate a vehicle* in a manner like that of an ordinarily prudent and cautious person in full possession of his faculties"]; see also *People v. Canty* (2004) 32 Cal.4th 1266, 1278-1280.) "It is not enough that the drug [or alcohol] could impair an individual's driving ability or that the person is under the influence to some detectible degree. Rather, the drug [or alcohol] must actually impair the individual's driving ability." (*People v. Torres* (2009) 173 Cal.App.4th 977, 983; see *Canty*, at p. 1279 ["[t]he gravamen of driving while under the influence is *driving* despite an impairment of capacity"].)

There is substantial evidence Traslavina was under the influence of alcohol, which impaired his ability to drive safely. Not one, not two, not three, not four, but five police officers, all of whom had training and experience in investigations of driving under the influence, observed multiple symptoms of alcohol intoxication and impairment immediately after the collision, including bloodshot and watery eyes, an odor of alcohol, slurred speech, slow and deliberate steps, and an admission by Traslavina that he had consumed alcohol earlier in the evening. (See *People v. McNeal, supra,* 46 Cal.4th at p. 1198 ["evidence of

actual impairment may include the driver's appearance, an odor of alcohol, slurred speech, impaired motor skills, slowed or erratic mental processing, and impaired memory or judgment"]; *Baker v. Gourley* (2002) 98 Cal.App.4th 1263, 1264 ["a jury in a court of law could certainly conclude in a criminal prosecution that a driver was intoxicated based on such indicia as slurred speech and an unsteady gait without a valid chemical test"].) Traslavina also failed to comply with police commands and refused to submit to field sobriety tests. (See *Espinoza v. Shiomoto* (Jan. 12, 2017, E064252) 7 Cal.App.5th 515 , ___ [2017 WL 120913, at p. 7] [a driver's refusal to get out of a car and submit to field sobriety tests are indications that he or she is under the influence].)

In addition, just before the collision, Traslavina's driving reflected a degree of recklessness reasonably associated with alcohol impairment. (See *Espinoza v. Shiomoto*, *supra*, 7 Cal.App.5th at p. ___ [2017 WL 120913, at p. 7] [investigating officer may consider "erratic driving" in determining whether there is probable cause to arrest for driving under the influence]; *People v. Weathington* (1991) 231 Cal.App.3d 69, 83 ["[i]f the issue is whether the ability of the driver to operate his vehicle is impaired, the manner in which the vehicle is driven is evidence which tends to prove or disprove that fact"]; accord, *Marvin v. Department of Motor Vehicles* (1984) 161 Cal.App.3d 717, 720.) Between traffic signals, Traslavina suddenly accelerated his car to excessive speeds, drifted out of his lane, and nearly struck other vehicles before screeching to a stop. There was also evidence he was driving 90 miles per hour just seconds before the accident and failed to apply the brakes until it was far too late.

Finally, Traslavina's phone call to a friend who was a police officer and his refusal to submit to field sobriety tests at the

scene indicated an awareness he was under the influence of alcohol and a consciousness of guilt. (See *People v. Jackson* (2010) 189 Cal.App.4th 1461, 1466-1469 [refusal to take standard field sobriety tests, as opposed to a refusal to submit to preliminary alcohol screening breath test, is admissible evidence of consciousness of guilt]; *Marvin v. Department of Motor Vehicles*, *supra*, 161 Cal.App.3d at p. 720 [evidence of a strong odor of alcohol and refusal to submit to a field sobriety test was "reasonably interpreted as a consciousness of guilt"].) Thus, there was substantial evidence that Traslavina's consumption of alcohol impaired his ability to safely operate a motor vehicle.

That there was conflicting evidence from Traslavina, his family members and his experts, that there may have been other explanations for the collision, or even that we might reach a contrary conclusion based on the evidence does not mean there was no substantial evidence to support Traslavina's convictions. (See *People v. Manibusan*, *supra*, 58 Cal.4th at p. 87 ["'[w]here the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal'"]; *People v. Jones* (2013) 57 Cal.4th 899, 963 ["'[i]f the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder'"]; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 ["[w]here there is substantial evidence to support the verdict, reversal is not warranted because the circumstances might also be reasonably reconciled with a contrary finding"].) The jury heard and rejected Traslavina's (and his cousins') account of the accident and the opinion of his experts. We have no reason to

disturb the jury's verdicts. (See *People v. Sibrian* (2016) 3 Cal.App.5th 127, 138 ["given the credibility determinations the jury plainly made, abundant evidence supports the verdict"]; *People v. Mejia* (2007) 155 Cal.App.4th 86, 99 [contradictions in the evidence "merely present[ ] the jury with a credibility determination that is not reviewable on appeal"].)

B. *The Trial Court Did Not Abuse Its Discretion in Admitting the Blood Alcohol Evidence*

1. *Relevant proceedings*

After some discussion before trial, the parties agreed it was not possible to calculate Traslavina's blood alcohol content at the time of the collision by retrograde extrapolation.[9] Because Traslavina had consumed the double vodka drink minutes before the accident, he was still absorbing the alcohol into his blood stream when the collision occurred. Counsel for Traslavina therefore objected to the admission of the blood alcohol test results as irrelevant. The court overruled the objection.

Following the testimony of Lauren Lewis, counsel for Traslavina renewed his relevance objection and moved to strike all of Lewis's testimony about the blood alcohol evidence. In overruling the objection, the court stated the evidence was relevant because it "potentially support[s] the People's position that [Traslavina] had alcohol in his system above and beyond what the cousins would have suggested. And while they're not

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[9] Retrograde extrapolation is "estimating a blood-alcohol level that existed at an earlier time based on a reading at a known later time." (*People v. Vangelder* (2013) 58 Cal.4th 1, 12.)

free to do a calculation of what that blood alcohol level would be, it does bear generally and is relevant as to whether he was, in fact, under the influence."[10]

2. *Standard of review*

"'[A]n appellate court applies the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence.'" (*People v. Kopatz* (2015) 61 Cal.4th 62, 85; see *People v. Dean* (2009) 174 Cal.App.4th 186, 193 ["'[a]s a general matter, a trial court is vested with broad discretion in ruling on the admissibility of evidence'"].) This abuse of discretion standard applies to rulings on whether evidence is relevant under Evidence Code section 210. (See *People v. Hamilton* (2009) 45 Cal.4th 863, 913 [""""[t]he trial court has broad discretion in determining the relevance of evidence"""""]; *People v. Wallace* (2008) 44 Cal.4th 1032, 1057 ["we review for an abuse of discretion a trial court's admission of evidence as relevant"]; *People v. Carter* (2005) 36 Cal.4th 1114, 1166-1167 ["[t]he trial court has broad discretion in determining the relevance of evidence"].)

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[10] Both Traslavina and the People misinterpret the court's use of the pronoun "they" as referring to the jury. The court was actually referring to the People, who were the proponent of the evidence, and who, as the parties had agreed, were unable to use the evidence to determine Traslavina's blood alcohol content at the time of the collision.

3. *The trial court did not abuse its discretion in ruling the blood alcohol evidence was relevant*

Common to both gross vehicular manslaughter while intoxicated and driving under the influence causing bodily injury is the element of driving under the influence of alcohol, which, as discussed, requires proof that alcohol consumption impaired the defendant's driving. Here, the blood alcohol evidence was admissible to show Traslavina had consumed alcohol that night. (See *People v. Carter*, *supra*, 36 Cal.4th at p. 1166 [under Evidence Code section 210, relevant evidence is "evidence 'having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action'"].) As the trial court noted, "even though perhaps the People may not be able to demonstrate the .08 percent or higher, there's certainly a question as to whether [Traslavina] was drinking alcohol and what the impact might have been with respect to the ingestion of the double vodka. And so it does appear . . . there's relevance to that, separate and apart from the particular counts that are charged here." In other words, although the blood alcohol evidence may not have been relevant to the Vehicle Code section 23153, subdivision (b), count, it was relevant to the Vehicle Code section 23153, subdivision (a), count.

The blood alcohol evidence was also admissible to impeach Traslavina's testimony that he had no alcoholic drinks before the collision other than the double vodka drink. According to Lewis's calculations, Traslavina must have consumed more than the one vodka drink he said he had in order for his blood alcohol level to reach .10 percent hours after the accident when the police drew his blood. Lewis testified that, based on the evidence of Traslavina's .10 percent blood alcohol level from the blood test,

"there would have to be other alcohol consumption." As the trial court properly found, the blood alcohol evidence was relevant to impeach Traslavina's testimony regarding how much he drank that evening. (See *People v. Abel* (2012) 53 Cal.4th 891, 924-925 [evidence bearing on the credibility of a witness's testimony is relevant and admissible]; *People v. Cunningham* (2001) 25 Cal.4th 926, 1025 ["[e]vidence tending to contradict a witness's testimony is relevant for purposes of impeachment"].) Thus, the trial court did not abuse its discretion in admitting the blood alcohol evidence.[11]

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[11] Traslavina also argues the trial court abused its discretion under Evidence Code section 352. (See *People v. Merriman* (2014) 60 Cal.4th 1, 60 [trial court "'has broad discretion' under Evidence Code section 352 'to exclude even relevant evidence "if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury"'"].) Because Traslavina did not object at trial on this ground, he has forfeited the argument on appeal. (See *People v. Valdez* (2012) 55 Cal.4th 82, 138 ["[i]nsofar as defendant argues the evidence was inadmissible under Evidence Code section 352 because its potential to cause undue prejudice substantially outweighed its probative value, defendant forfeited this argument by failing to object on this basis at trial"].)

C. *The Trial Court Did Not Err in Denying Traslavina's Motion To Suppress the Warrantless Blood Test*

1. *Relevant law*

In *Schmerber v. California* (1966) 384 US. 757 (*Schmerber*), the United States Supreme Court upheld a warrantless, nonconsensual blood test following an arrest for driving under the influence. The Supreme Court concluded the Fourth Amendment's warrant requirement was excused because the arresting officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence,'" in that "the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system." (*Id.* at p. 770.)

The United States Supreme Court revisited *Schmerber* in *Missouri v. McNeely* (2013) 569 U.S. ___, 133 S.Ct. 1552 (*McNeely*) and held "the natural metabolization of alcohol in the bloodstream" is not "a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." (*Id.* at p. 1556.) The *McNeely* court clarified that, "consistent with general Fourth Amendment principles, . . . exigency in this context must be determined case by case based on the totality of the circumstances." (*Ibid.*)

Prior to *McNeely*, the United States Supreme Court had held in *Davis v. United States* (2011) 564 U.S. 229 (*Davis*) that law enforcement "searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule," even when that precedent is later overruled.

(*Id*. at p. 232.) The Supreme Court in *Davis* considered whether suppression was the proper remedy for evidence obtained by a search that "turned out to be unconstitutional" under *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*) but was "in strict compliance" with case law prior to *Gant*. The Supreme Court in *Davis* held that in these circumstances the policies behind the exclusionary rule did not apply. The Supreme Court stated there was no "police culpability" because the officers "did not violate [the defendant's] Fourth Amendment rights deliberately, recklessly, or with gross negligence." (*Id.* at p. 240.)

Recent California decisions, following *Davis*, have upheld warrantless blood tests administered prior to *McNeely*, despite the absence of exigent circumstances. (See, e.g., *People v. Jimenez, supra*, 242 Cal.App.4th at p. 1365; *People v. Harris* (2015) 234 Cal.App.4th 671, 676, 703; *People v. Jones* (2014) 231 Cal.App.4th 1257, 1265; *People v. Rossetti* (2014) 230 Cal.App.4th 1070, 1076-1077; *People v. Youn* (2014) 229 Cal.App.4th 571, 577.) The courts in these cases have explained that, before *McNeely*, California courts had ""uniformly interpreted *Schmerber* to mean that no exigency beyond the natural evanescence of intoxicants in the bloodstream, present in every DUI case, was needed to establish an exception to the warrant requirement."" (*Jimenez,* at pp. 1362-1363; see *Harris,* at p. 702; *Jones*, at p. 1265; *Rossetti,* at pp. 1074-1075; *Youn,* at p. 577.) The courts in these cases held that law enforcement had administered the pre-*McNeely* warrantless nonconsensual blood tests in reasonable reliance on California courts' interpretation of *Schmerber*. (See *Jimenez*, at p. 1365; *Harris,* at p. 702; *Jones*, at p. 1265; *Rossetti*, at pp. 1076-1077; *Youn*, at p. 577.)

2. *Relevant proceedings*

In response to Traslavina's motion to suppress the result of his blood test, the prosecution did not attempt to justify the warrantless blood test under *McNeely* but instead relied on the *Davis* rule. The parties stipulated the collision predated *McNeely*.[12] The trial court assumed the prosecutor would not be able to demonstrate the existence of exigent circumstances, concluded *McNeely* applied retroactively, and found the warrantless blood test violated Traslavina's Fourth Amendment rights. Nonetheless, the court, citing the recent California appellate decisions, denied the motion to suppress based on *Davis*. The court concluded the officers acted in good faith reliance on existing legal precedent.

3. *The trial court properly applied the* Davis *rule*

Traslavina argues *McNeely* did not create a new rule of law but merely reaffirmed the totality of the circumstances test of *Schmerber*, which California appellate courts had misinterpreted as providing a per se exception to the warrant requirement in driving under the influence cases. Traslavina argues that, because *McNeely* clarified rather than changed existing law, the *Davis* rule does not apply to pre-*McNeely* warrantless blood tests. Essentially, Traslavina argues that the many California appellate decisions upholding pre-*McNeely* warrantless blood tests where law enforcement had relied on then-controlling appellate authority all "misapplied" *Davis*.

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[12] The police administered Traslavina's warrantless blood test in March 2013, approximately one month before the Supreme Court decided *McNeely* on April 17, 2013.

We think those decisions correctly applied *Davis*. "[T]he 'prime purpose' of the exclusionary rule 'is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures,'" and, "[a]s with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." (*Illinois v. Krull* (1987) 480 U.S. 340, 347.) When the police act in an objectively reasonable manner consistent with existing law, "the "'deterrence rationale loses much of its force,'" and exclusion cannot 'pay its way.'" (*Davis*, *supra*, 564 U.S. at p. 238.) As the court explained in *People v. Youn, supra*, 229 Cal.App.4th 571, the *Davis* rule avoids penalizing law enforcement officers for errors of appellate judges. (*Id.* at p. 579.) Where, as here, police officers are complying in good faith with the law as it existed at the time, there is no reason to apply the exclusionary rule. (*Ibid.*; see *Harris*, *supra*, 234 Cal.App.4th at p. 703 ["[t]he police were in no way culpable for following the law of this state that had been settled for just over 40 years," and "[t]o penalize the police . . . for the courts' error, which was only brought to light *after* defendant's blood draw, would not logically serve to deter future Fourth Amendment violations"]; *Rossetti*, *supra*, 230 Cal.App.4th at p. 1077 ["despite the change in the law, no "'appreciable deterrence'" would result from suppressing the results of the blood draw in this case, and the trial court properly ruled this evidence was admissible"].) The trial court did not err in applying *Davis* to deny Traslavina's motion to suppress.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.