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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY BEASLEY,

Defendant and Appellant.

B284739

(Los Angeles County
Super. Ct. No. YA032219)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Richard B. Lennon, 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, Noah P. Hill and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Danny Beasley (defendant) appeals from the trial court's post-judgment order denying his petition for recall and resentencing under Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126).¹ In 1998, defendant pled no contest to the charge of evading a police officer causing death to a person (Veh. Code, § 2800.3, subd. (b)), and admitted two prior "strikes" within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12). The trial court sentenced him as a third strike offender to a prison term of 25 years to life.

In 2013, defendant petitioned for a reduction of his sentence under Proposition 36, arguing his third strike offense was not a serious felony. The issue before the resentencing court was whether defendant personally inflicted great bodily injury on a person "other than an accomplice," an exclusion under Proposition 36. (§ 1192.7, subd. (c)(8); see also §§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii).) Applying the preponderance of the evidence standard, the court ruled the 1998 record of conviction established the victim was not an accomplice in the decision to evade police, and concluded defendant's current offense was a serious felony and he was ineligible for resentencing.

Defendant filed a timely notice of appeal.

On appeal, defendant contends the resentencing court erred in denying his petition by failing to require that the People prove ineligibility beyond a reasonable doubt. The People agree the trial court applied the wrong standard of proof, but contend that in light of the overwhelming evidence that Jennifer D. (Jennifer) was not an accomplice, there is no reasonable

¹ All further statutory references are to the Penal Code.

probability that the trial court would have reached a more favorable outcome for defendant if the correct burden of proof standard had been applied. We agree the court's error was harmless and affirm its order.

FACTUAL AND PROCEDURAL BACKGROUND²

I. The Current Offense

On March 5, 1997, Norma A. reported that her blue Honda had been stolen. She had last seen the car the night before, when she parked it in front of her residence.

On March 6, 1997, Glenda D. (Glenda) observed defendant driving a blue Honda Accord. Defendant was also driving the blue Honda when he came to Glenda's residence on March 7 shortly before 5:00 p.m. to pick up Glenda's daughter, Jennifer. Jennifer went with defendant, his brother Thomas Beasley (Thomas)³ and Jennifer's friend Anna in the Honda to cash a check.

Defendant returned to Glenda's residence later that night, at about "11:30, 12:30" to pick up Jennifer and Anna again. He was still driving the blue Honda. Anna got into the front passenger seat and Jennifer got into the rear passenger seat with Thomas. Jennifer was planning to go to Sav-On to pick up diapers and some other things for her infant.

² The facts are taken from the evidence presented at the preliminary hearing on July 29, 1997.

³ We refer to Glenda, Jennifer and Thomas by their first names for clarity.

On March 8, 1997, at approximately 1:30 a.m., Hawthorne Police Officer Steven Romero, and a trainee police officer, noticed a blue Honda in oncoming traffic driving with no lights. The Honda made a left turn onto Doty. The patrol car made a right turn onto Doty, following the Honda. The Honda turned into a private driveway about 200 to 250 feet up the block and stopped. Officer Romero did not see anyone get out of the car. Officer Romero ran the license plate for the Honda and learned it had been stolen. The officers continued past the driveway, intending to make a U-turn at the next intersection. Officer Romero saw the Honda back out of the driveway and park against the curb. The officers began their U-turn and the Honda pulled away from the curb. Five to ten seconds later, the officers turned on the lights and sirens of their vehicle and broadcast to other police units that they were in pursuit of a stolen Honda.

The trainee police officer, who was driving, was unable to closely follow the Honda, and they lost track of it. The officers learned through their police radio that another officer had located the Honda and that it was traveling at about 70 to 80 miles per hour. The pursuit of the Honda ended when it collided with two parked vehicles.⁴

When Officer Romero arrived at the collision location, he noticed three occupants in the Honda: a male occupant pinned in the driver's seat because the car was totaled, and two female occupants in the back seat slumped over. He also observed a male individual detained by an officer on the curb. The fire department had also arrived at the scene and its personnel were

⁴ The license plate number of the Honda involved in the collision matched that of the stolen Honda.

using tools to cut metal portions of the Honda in order to rescue the occupants. Officer Romero identified defendant as the occupant seated in the driver's seat of the Honda.

California Highway Patrol (CHP) Officer Jason Hamilton came to the collision location to investigate. He spoke to one of the female occupants, Anna, who identified the other female occupant as Jennifer. Jennifer was unconscious and unable to speak. She later died from her injuries. Anna stated defendant had hit two large dips in the road, causing the Honda to become airborne and strike a vehicle on a roadway; it then ricocheted off that vehicle, hitting another vehicle parked at the curb. Officer Hamilton also spoke with Thomas, who confirmed the Honda hit dips in the road and then became airborne. Based on Officer Hamilton's investigation at the scene, which included his review of the physical evidence, skid marks, gouges in the roadway, damage to the vehicles, and statements of the parties and witnesses, he determined defendant had caused the accident as a result of "unsafe speed violations."

On May 7, 1997, approximately two months after the accident, CHP Officer Valeska Karsgor interviewed Anna at her home. Anna knew she had been riding in a stolen vehicle because the steering column of the Honda was broken. She could not remember whether she talked about that circumstance with the other passengers. She identified defendant as the driver of the Honda.

At the preliminary hearing, Officer Karsgor testified on direct examination that Anna told him that "while they were driving, [defendant] had stated that if the police started chasing them, he wasn't going to stop." When defense counsel tried to get a more precise estimate of time, the officer responded that Anna

told him that defendant made the statement “shortly before the police were behind the vehicle.” In response to a follow-up question, the officer said only that the statement was made “while they were traveling shortly before the police were behind them.” Anna claimed defendant drove faster when the police starting chasing them.⁵

On April 3, 1998, defendant pled no contest to the charge of evading a police officer causing death to Jennifer.

II. The Proposition 36 Petition

On July 17, 2013, defendant filed a petition for recall and resentencing under Proposition 36, arguing his conviction for evading a police officer was not a serious felony. According to defendant, he “did not intentionally harm nobody,” and Jennifer “was a willing participant in the evasion of the police.” The court ruled defendant made a prima facie showing of eligibility, and issued an order to show cause as to why the requested relief should not be granted.

On April 11, 2014, the People filed an opposition to the petition, arguing it should be denied because there was no evidence Jennifer encouraged defendant’s conduct or “otherwise acted as an accomplice.” The People further contended defendant posed an unreasonable danger to public safety.

On July 24, 2017, the court held a hearing on the matter and denied defendant’s petition, ruling Jennifer was not an accomplice, making defendant’s current offense a serious felony

⁵ Anna also recalled statements made by Jennifer during the police chase. Defense counsel objected to the statements, and the trial court sustained the objection, striking Jennifer’s statements from the record.

and rendering defendant ineligible for resentencing. The court clarified that it was using the preponderance of the evidence standard in making its ruling.

Defendant filed a motion for reconsideration, which the court denied. In its written order, the court pointed to Anna's statement that defendant said, "if the police started chasing them, he wasn't going to stop and also she recalled as the police were chasing them, he started to drive faster," and explained the statement "indicates that the passengers of the car were not involved in the decision to evade the police." It therefore held defendant's conviction was a serious felony disqualifying him from resentencing under Proposition 36.

DISCUSSION

Section 1170.126 was enacted as part of Proposition 36, which became effective on November 7, 2012. (*People v. Johnson* (2015) 61 Cal.4th 674, 685.) Proposition 36 "created a postconviction release proceeding whereby a prisoner who is serving an indeterminate life sentence imposed pursuant to the three strikes law for a crime that is not a serious or violent felony and who is not disqualified, may have his or her sentence recalled and be sentenced as a second strike offender unless the court determines that resentencing would pose an unreasonable risk of danger to public safety. (§ 1170.126.)" (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 168.)

Defendant's conviction for felony evading of a peace officer in violation of Vehicle Code section 2800.3 is not designated as a serious or violent felony within the meaning of section 1170.126. However, any felony in which the defendant personally inflicts

great bodily injury “on any person, other than an accomplice” is a serious felony. (§ 1192.7, subd. (c)(8).) Defendant’s plea is an admission that he personally inflicted great bodily injury on Jennifer during his commission of felony evasion of peace officers. Thus, defendant’s eligibility for resentencing turns on whether Jennifer was an accomplice in defendant’s crime.

In determining whether Jennifer was an accomplice, thus rendering defendant eligible for resentencing, “the court may examine relevant, reliable, admissible portions of the record of conviction to determine the existence or nonexistence of disqualifying factors.” (*People v. Blakely* (2014) 225 Cal.App.4th 1042, 1063.) The record of conviction includes preliminary hearing transcripts and facts therein underlying dismissed counts. (*People v. Estrada* (2017) 3 Cal.5th 661, 670; *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1531.)

Once a defendant has made a prima facie showing of eligibility, as the court found defendant did here, the People have the burden of proving a defendant ineligible for resentencing under Proposition 36. At the time of defendant’s resentencing hearing, there was a split of authority concerning whether the People were required to show ineligibility by a preponderance of the evidence or by proof beyond a reasonable doubt

The court in this case found the People had shown by a preponderance of the evidence that Jennifer was not an accomplice; the court accordingly found defendant ineligible for resentencing. During the pendency of defendant’s appeal, our Supreme Court held that the People bear the burden of proving beyond a reasonable doubt that an inmate is ineligible for resentencing. (*People v. Frierson* (2017) 4 Cal.5th 225, 234-236.)

Defendant contends that not only did the trial court employ the wrong burden of proof, but the court imposed that burden on the wrong party: defendant. With respect to defendant's claim that the trial court improperly put the burden of proof on defendant rather than the People, we do not agree that the trial court's comments at the sentencing hearing show a belief that defendant had the burden of proving Jennifer was an accomplice. During the relevant portion of the hearing, defense counsel agreed with the People that the People were required to prove defendant had personally inflicted the injury and that the victim was not an accomplice. The court then asked if it were the defense's "contention" that Jennifer was an accomplice. When defense counsel replied that it was, the court said that it would permit defense counsel to "argue" the point, but the court had not been "persuaded" by the record. The court's remarks were primarily aimed at clarifying the basis of defendant's disagreement with the People. The court's reference to the record is best understood as guidance to defense counsel in her argument, not a shifting of the burden of proof. Defense counsel appears to have understood the comments that way: she summarized the record and argued "there is insufficient evidence to establish that [Jennifer] is not an accomplice." The prosecutor replied by pointing to the evidence and arguing that defendant's statement about not stopping showed "he is acting alone in the evading." The court's later explanation of its denial of the motion for reconsideration explicitly referred to defendant's statement as showing he acted alone and Jennifer was not an accomplice. This reinforces our conclusion that the court's ruling was based on proof by the People, not lack of proof by the defense.

The People acknowledge the trial court used the incorrect burden of proof, but maintain the error is harmless because the evidence is overwhelming that Jennifer was not an accomplice. We agree.

Application of the heightened standard of review in *Frierson* was based on state statutory authority only. (*People v. Frierson, supra*, 4 Cal.5th at pp. 235-239.) Accordingly, we apply the state law standard of review articulated in *People v. Watson* (1956) 46 Cal.2d 818 and consider if there is a reasonable probability of a different outcome in the absence of the court's error. (*Id.* at p. 836.)

Generally, an individual is an accomplice if she acts “with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.” [Citation.]” (*People v. Prettyman* (1996) 14 Cal.4th 248, 259.) Typically, an accomplice “gives aid or encouragement” to the perpetrator in the commission of the offense. (*Ibid.*) “[N]either presence at the scene of a crime nor knowledge of, but failure to prevent it, is sufficient to establish aiding and abetting its commission.” (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

The People have shown that the Honda was not newly stolen, and that Jennifer had ridden in it earlier in the day without incident. The People have also shown that the CHP investigated the circumstances leading up to the crash, including questioning Anna about discussions in the car before and during the pursuit. The investigation did not uncover any evidence that Jennifer in any way encouraged or facilitated defendant's evasion. Anna's statement to the CHP investigator shows that defendant announced his intent to evade police only moments

before police began following; this would have been unnecessary if the occupants of the vehicle had all previously agreed to evade the police if spotted. Once defendant saw the police behind him, he sped up, trapping the other occupants in the car. Thus, the evidence is overwhelming that Jennifer was merely present during defendant's commission of the evading offense and did not assist or encourage it in any way.

Defendant contends that even if the evidence in its present state is overwhelming, reversal and remand is nevertheless required because the trial court erroneously prevented defendant from presenting evidence outside the record of conviction showing that Jennifer was an accomplice, specifically a declaration from Thomas first given after defendant's conviction.

"[T]he statutory language and framework of Proposition 36 contemplate a determination of a petitioner's eligibility for resentencing based on the record of conviction." (*People v. Bradford* (2014) 227 Cal.App.4th 1322, 1338; see *People v. Oehmigen* (2014) 232 Cal.App.4th 1, 7 ["[t]he facts [determining eligibility under Proposition 36] are limited to the record of conviction underlying a defendant's commitment offense"].) As explained in *Bradford*, "[h]ad the drafters of Proposition 36 intended the trial court to consider newly offered 'evidence' at the eligibility stage, they would have included express language of the type they did to describe the nature of the court's later, discretionary sentencing determination," but chose not to. (*Bradford, supra*, at p. 1339.) Thus the trial court did not err in excluding Thomas's declaration.

DISPOSITION

The order is affirmed.

GOODMAN, J.*

We concur:

RUBIN, Acting P. J.

GRIMES, J.

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