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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. SEBASTIEN PAUL MADAULE, Defendant and Appellant.	B293316 (Los Angeles County Super. Ct. No. GA101560)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Affirmed.

James Edward Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Paul S. Thies, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Sebastien Paul Madaule was driving his pickup truck on a congested freeway when he suddenly veered into the high occupancy toll lane in front of a motorcyclist. The motorcyclist, Eric Kawai, was unable to avoid colliding with the truck and died from injuries sustained in the crash.

A jury convicted Madaule of misdemeanor manslaughter. He was sentenced to a short period in county jail and three years of summary probation. The court also ordered Madaule to pay fines and fees and complete community service.

On appeal, Madaule alleges the court was required to instruct the jury on causation and hold a hearing to determine whether he has the ability to pay the fines and fees.

We conclude the evidence does not support a causation instruction and Madaule is not entitled to an ability-to-pay hearing.

Accordingly, we affirm the judgment and orders.

FACTUAL AND PROCEDURAL BACKGROUND

I. Relevant Testimony

In November 2016, Madaule was driving his pickup truck eastbound on Interstate 10 near Alhambra. The freeway had four regular lanes and two high occupancy lanes known as "HOT" lanes.[1] Madaule was traveling with friends on his way to Big Bear for the weekend. The traffic on the freeway was congested

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[1] The lanes are numbered one through four, with the fourth lane being the farthest on the right, adjacent to the shoulder. The first lane is adjacent to the number two HOT lane, and the number one HOT lane is farthest to the left.

and, according to two eyewitnesses, the vehicles on the freeway were traveling anywhere from 10 to 20 miles per hour.

Avetis Boyadzhyan was driving in the number one regular lane when he observed Madaule a few cars behind him moving between lanes one and two. Boyadzhyan told his girlfriend that he was going to steer clear of Madaule because Madaule was driving "a little recklessly." According to Boyadzhyan, traffic was moving at approximately 10 to 15 miles per hour.

Eventually, Madaule caught up to Boyadzhyan's car in the number two lane and drove into the number one lane in front of Boyadzhyan without signaling. Boyadzhyan had to brake his car to avoid hitting the back of Madaule's truck. The traffic was still "stop-and-go" at this point. Madaule turned into the number two lane again, and then back into the number one lane in front of Boyadzhyan without signaling either time. Madaule made these three lane changes without signaling and within a span of approximately one minute.

Approximately five to 10 seconds later, Boyadzhyan observed Madaule speed up to approximately 20 to 25 miles per hour and drive across the double white lines separating the HOT lanes from the regular lanes. Boyadzhyan's girlfriend testified Madaule had "cut [them] off" with his truck before entering the HOT lane. Boyadzhyan testified Madaule drove his car "fully" into the number two HOT lane. As Madaule was merging into the number two HOT lane, Boyadzhyan checked his left side mirror and saw victim Kawai's green motorcycle approaching in the number two HOT lane. The HOT lane had been clear of vehicles up to that point.

Kawai tried to veer into the number one HOT lane but was not able to avoid hitting Madaule's truck. As Kawai's motorcycle collided with the left rear side of Madaule's truck, Kawai flew off the motorcycle on to the ground. Boyadzhyan pulled into the HOT lanes and stopped. Madaule made his way to the right shoulder, stopped, and then went to the scene of the crash.

Another witness, Mario Mota, was traveling east on the Interstate 10 near Alhambra and observed Kawai drive his motorcycle onto the freeway. Mota testified the freeway was congested and cars were traveling at about 15 to 20 miles per hour. Kawai used hand signals to get permission from other cars on the freeway to move from the number four lane to the number one lane. Mota observed Kawai begin to drive on top of the double lines separating the number one lane from the number two HOT lane. Kawai then accelerated to approximately 55 to 60 miles per hour. Mota lost sight of Kawai; four or five seconds later, he saw Kawai's motorcycle on the ground.

California Highway Patrol Officer Jeffrey McKee responded to the scene. He testified traffic in the regular lanes was bumper to bumper, and traffic in the HOT lanes was light. McKee also testified the speed limit in the regular and HOT lanes at this particular portion of the freeway was 65 miles per hour. Officer McKee stated motorcycles are not permitted to ride on the double lines separating HOT lanes from regular lanes and when a motorcycle is lane splitting (also referred to as lane sharing) the driver is not permitted to go faster than 10 miles per hour above the flow of surrounding traffic.

Officer McKee testified the evidence tended to show that Madaule was not yet established in the HOT lane when the collision took place; rather, his truck was likely at an angle, indicating Madaule was in the process of moving fully into the HOT lane when Kawai collided with his truck. Based on witness statements, physical evidence, and the truck's damage, Officer McKee formed the opinion that Madaule made a sudden turning movement to enter the HOT lane into Kawai's path; Kawai was unable to avoid Madaule's truck; and the collision occurred approximately six feet inside the number two HOT lane.

Christopher Rogers, a Deputy Medical Examiner for Los Angeles County, conducted an autopsy and determined Kawai's cause of death was blunt chest trauma.

Madaule testified he was changing lanes to find a consistent pace for his truck. His truck was a stick shift and it was "kind of a hassle" to have to switch gears frequently in stop-and-go traffic. Madaule had only been driving a stick shift for a few months so it was complicated for him to negotiate the gears and the clutch. When switching lanes, he sometimes used his turn signals and sometimes did not. Madaule testified he was driving approximately 35 to 40 miles per hour, but was not driving faster than the cars around him.

Madaule stated that, while in the regular number one lane, the car in front of him came to a complete stop suddenly. The car was "a couple" of car lengths in front of him. Madaule was not sure he could slow down in time. He did not want to hit the brakes hard because he did not want to lose control of the truck. He looked to his right, but there were too many cars for him to move in that direction. Madaule then quickly looked to his left in his mirror and partially over his shoulder, did not see anyone

coming, and veered to the left. Madaule stated he "just very partially" pulled into the number two HOT lane. As he was straightening out and moving back into the regular number one lane, he felt a thud behind him.

Madaule admitted he went in and out of the regular number one and two lanes before veering into the number two HOT lane. He was not sure whether he used his turn signals. He testified he was driving between 35 and 40 miles per hour when he made the lane changes.

II. The Charge

The People filed an information charging Madaule with one count of felony vehicular manslaughter in violation of Penal Code section 192, subdivision (c)(1) (also known as vehicular manslaughter with gross negligence or gross vehicular manslaughter). The jury was instructed on felony vehicular manslaughter and misdemeanor vehicular manslaughter (also known as vehicular manslaughter with ordinary negligence).

DISCUSSION

I. Jury Instructions

We independently review whether the jury instructions correctly stated the law and whether they "effectively direct[ed] a finding adverse to a defendant by removing an issue from the jury's consideration." (*People v. Posey* (2004) 32 Cal.4th 193, 218.)

The court gave the jury the standard CALCRIM instructions for vehicular manslaughter with gross negligence, and vehicular slaughter without gross negligence.

CALCRIM No. 592, the gross vehicular manslaughter instruction, requires the People to prove that: (1) the defendant drove a vehicle; (2) while driving, the defendant committed an

infraction, or otherwise lawful act that might cause death; (3) the defendant committed the infraction, or otherwise lawful act, with gross negligence; and (4) the defendant's grossly negligent conduct caused the death of another person. The instruction defines gross negligence as reckless conduct that creates a high risk of death or great bodily injury and that a reasonable person would have known that engaging in the conduct would create such a risk. The definition further states that a person acts with gross negligence "when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act." (CALCRIM No. 592.)

CALCRIM No. 593, the misdemeanor vehicular manslaughter instruction, requires the People to prove that: (1) while driving a vehicle, the defendant either committed an infraction, or committed an otherwise lawful act in a lawful manner; (2) the infraction or otherwise lawful act was dangerous to human life under the circumstances; (3) the defendant committed the infraction or otherwise lawful act with ordinary negligence; and (4) the infraction or otherwise lawful act caused the death of another person. The instruction defines ordinary negligence as "the failure to use reasonable care to prevent reasonably foreseeable harm to oneself or someone else." The instruction further states that "[a] person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation." (CALCRIM No. 593.)

The People alleged Madaule committed two infractions: unsafe lane change in violation of Vehicle Code section 22107, and unlawful entry into an exclusive preferential use lane in violation of Vehicle Code section 21655.8. The People also alleged Madaule committed an otherwise lawful act which might cause death when, before entering the HOT lane, Madaule failed to observe Kawai approaching the same lane.

Madaule asked the court to include as well a bracketed portion of the instructions that defines causation as follows: "An 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. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence." (CALCRIM Nos. 592, 593.)

In the trial court Madaule argued that the causation instruction was warranted because the jury heard evidence that Kawai crossed four lanes of traffic in a short period of time, drove on top of the double lines, and was traveling at 55 to 60 miles per hour. Madaule argued it was a "convergence" of these acts and Madaule crossing the double lines that constituted "multiple causes" of the collision. The trial court denied the request, stating that how the victim was driving did not matter as far as causation because what was at issue was defendant's conduct and whether defendant was grossly negligent at the time he acted.

On appeal, Madaule contends the court erred in denying his request for the causation instruction because his defense was that it was the motorcycle's unlawful act of straddling the double lines of the HOT lane at 60 miles per hour that caused the

accident, not Madaule's evasive maneuver to avoid a collision with the car in front of him. Nevertheless, Madaule acknowledges that if it is shown his conduct was the proximate cause of Kawai's death, he is criminally liable even if the victim was also negligent. After all, it is "well established" that the contributing negligence of the victim is not a defense to vehicular manslaughter unless the victim's conduct was the sole or superseding cause of death. (*People v. Marlin* (2004) 124 Cal.App.4th 559, 569; *People v. Autry* (1995) 37 Cal.App.4th 351, 360 (*Autry*).)

Madaule argues, however, that Kawai's conduct, while not a defense, goes to the issue of causation. He contends Kawai's driving behavior was an intervening and superseding cause of death, which breaks the chain of causation and relieves him of criminal responsibility. Therefore, the court had a sua sponte duty to give the causation instruction, which specifies that a natural and probable consequence is one that a reasonable person would know is likely to happen "if nothing unusual intervenes."

We disagree with Madaule's analysis.

First, we note the CALCRIM instructions on vehicular manslaughter state that the trial court has a sua sponte duty to give the causation instruction only when causation "is at issue" and only if the evidence suggests there was only one cause of death. (CALCRIM Nos. 592, 593; see *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591.) Madaule did not request the causation instruction on a theory that Kawai's conduct was the sole proximate cause of the death. Rather, as discussed above, defense counsel asked for the instruction to support a theory that there were multiple causes and that Madaule veering into the HOT lane converged with Kawai's conduct to create the collision.

Madaule's argument on appeal simply does not jibe with the theory defense counsel advanced before the trial court when discussing jury instructions.[2]

Second, Madaule's theory on appeal—that Kawai's conduct was a superseding, intervening cause breaking the chain of causation—is not supported by the evidence.

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[2] Where there is evidence that there was more than one cause of death, and where causation is at issue, the court must include a different bracketed instruction contained in the standard CALCRIM instruction that states: "There may be more than one cause of death. 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 need to be the only factor that causes the death." (CALCRIM Nos. 592, 593; see *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 (*Pike*).) Madaule could have requested this instruction based on his theory at the time that there were multiple causes of Kawai's death. He did not. And, even if the court had a sua sponte duty to provide it, Madaule does not raise the issue on appeal. Furthermore, any error would have been harmless because, as discussed below, concurrent causes do not relieve a defendant from criminal culpability. Only if there was evidence that Madaule's conduct was *not* a substantial factor in Kawai's death could he have been acquitted. (*People v. Wattier* (1996) 51 Cal.App.4th 948, 953; *Pike,* at p. 746 [instruction should be given where " 'injury may have resulted from either of two causes operating alone' "].) Based on the evidence of Madaule's driving behavior, it is not reasonably probable the jury would have found his conduct was not a substantial factor in Kawai's death. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Breverman* (1998) 19 Cal.4th 142, 165.)

A superseding, intervening cause must be an " 'unforeseeable and extraordinary occurrence' " to relieve a defendant of criminal liability. (*People v. Fiu* (2008) 165 Cal.App.4th 360, 371.) Only an unforeseeable, extraordinary and abnormal occurrence will rise to the level of an "exonerating, superseding cause." (*People v. Armitage* (1987) 194 Cal.App.3d 405, 420–421.) Only when a victim's conduct is so remote and attenuated from the defendant's negligent conduct will the chain of causation be broken such that the intervening act becomes the sole cause of death. (*Pike*, *supra*, 197 Cal.App.3d at p. 748; *Autry*, *supra*, 37 Cal.App.4th at p. 361.)

The evidence at trial was that Madaule was weaving in and out of lanes in the middle of stop-and-go traffic, many times without signaling. Boyadzhyan characterized Madaule's driving as reckless and made efforts to steer clear of him. Two witnesses testified the cars were moving at approximately 10 to 15 miles per hour, yet Madaule himself stated he was driving between 35 and 40 miles an hour when he veered into the HOT lane in front of Kawai. Officer McKee testified that there was no way Kawai could have avoided Madaule's truck when Madaule suddenly crossed the double lines. In addition, the jury heard evidence that the HOT lanes were clear at the time of the accident. Although motorcycles are not legally permitted to split lanes between regular and HOT lanes, they routinely split regular freeway lanes when Los Angeles traffic is heavy. And, it is entirely foreseeable that a vehicle in a clear, uncongested HOT lane would be traveling at a much higher speed than the vehicles stuck in traffic on the regular lanes. After all, the purpose of the HOT lanes is to allow motorcycles and high occupancy vehicles to travel faster than the rest of the motorists. Accordingly, we

conclude Kawai's conduct was not so unforeseeable, extraordinary, or abnormal that it broke the chain of causation between Madaule's negligence and Kawai's death.[3]

Additionally, an intervening, superseding cause will only relieve a defendant of responsibility if it " 'breaks the chain of causation' *after* the defendant's *original* act." (*Autry*, *supra*, 37 Cal.App.4th at p. 361.) Here, the evidence established that

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[3] Madaule also provided evidence that he veered into the HOT lane to avoid hitting a car that suddenly came to a halt in front of him. This evidence went to whether Madaule was negligent. Madaule is not alleging on appeal that this evidence, if believed, somehow required the court to provide a causation instruction. Madaule's testimony about trying to avoid an accident went to whether he acted negligently, testimony which, if believed by the jury, would have either negated an element of vehicular manslaughter or operated as a defense. In any event, the vehicular manslaughter instructions given to the jury stated that "[a] person facing a sudden and unexpected emergency situation not caused by that person's own negligence is required only to use the same care and judgment that an ordinarily careful person would use in the same situation, even if it appears later that a different course of action would have been safer." The jury was also given a separate jury instruction, CALCRIM No. 3404, stating a defendant is not guilty of vehicular manslaughter with gross negligence or vehicular manslaughter with ordinary negligence if he acted accidentally. Had the jury believed that Madaule veered into the HOT lane to avoid an accident and that an ordinary, careful person would have done the same, the People would not have proven that Madaule acted negligently under the circumstances. Clearly, the jury either did not credit Madaule's testimony that he was facing an accident or did not believe that veering into the HOT lane was what an ordinary, careful person would do under the circumstances.

Kawai was driving on top of the double lines for at least four seconds *before* Madaule veered into the HOT lane. Kawai's conduct therefore cannot be said to have broken the chain of causation arising from Madaule's original act of veering into the HOT lane. Madaule attempts to assert that Kawai's conduct in driving on the HOT lines superseded his act of veering into the HOT lane because Kawai straddled the white lanes at a high rate of speed after Madaule partially entered the hot lane and was returning to his normal lane. There is no dispute, however, that if Kawai was straddling the HOT lanes, he was doing so *before* Madaule veered in front of him; it therefore could not have constituted a superseding cause simply because he was still on the double lines at the moment of the collision.

Madaule argues his case is similar to *People v. Glass* (1968) 266 Cal.App.2d 222 (*Glass*), disapproved on other grounds in *People v. Superior Court* (1972) 6 Cal.3d 757, 765–766, footnote 7. In *Glass*, defendant was driving between 60 and 65 miles per hour on a road with a posted speed limit of 45 miles an hour. (*Glass*, at pp. 223–224.) She was intoxicated. (*Id.* at p. 223.) Repairs were underway at an intersection and the portion of the road available for use was significantly narrowed. (*Id.* at p. 224.) Defendant collided with a repair truck and killed two workmen. (*Ibid.*) There was evidence that there was no flagman present to warn motorists of the hazard created by the repair work on the street, no speed reduction signs, and no barricades nearby to direct traffic out of the danger zone. (*Ibid.*) The court would not admit evidence of the safety measures standard when repairing and constructing streets and highways. The Court of Appeal concluded this was error because the evidence could have shown

that the unsafe condition of the road was the sole cause of the accident. (*Id.* at p. 226.)

As noted in *Autry, Glass* is not applicable where defendant argues the victim's conduct is an intervening or superseding cause "reliev[ing] him of the consequences of his own conduct which caused the accident." (*Autry*, *supra,* 37 Cal.App.4th at p. 362.) *Glass* is only applicable when a defendant argues the victim's conduct was the sole cause of the accident. (*Autry*, at p. 362.) Here, Madaule has never argued Kawai's conduct was the sole cause of the accident. Rather, he contends erroneously that Kawai's allegedly negligent conduct intervened to break the chain of causation between Madaule's veering into the HOT lane and Kawai's death.

In this regard, *People v. Marlin*, *supra*, 124 Cal.App.4th 559 is instructive. There, the intoxicated defendant lost control of his car and swerved into the path of another motorist, causing a collision that led to the death of the motorist's unborn baby. (*Id.* at p. 563.) Defendant pled guilty but before sentencing asked to withdraw his plea because his attorney did not investigate the accident scene to determine whether the victim had acted negligently. (*Id.* at p. 564.) According to defendant, the victim was speeding and inattentive and the brakes on her car were not working properly. (*Id.* at p. 570.) The Court of Appeal affirmed, stating that even if the victim had acted negligently, the accident would not have occurred but for his negligence. (*Ibid.*) "This is not a case," the court declared, "where defendant's acts were so remote that [the victim's] actions or failures, had they been established, would have been deemed the sole proximate cause of the collision." (*Ibid.*) Accordingly, there could be no doubt that

the defendant's actions were a substantial factor contributing to the accident. (*Ibid.*)

Like the defendant in *Marlin*, Madaule's act of suddenly veering into Kawai's path was not so remote that Kawai's conduct can be deemed the sole proximate cause of the accident. The fatal accident simply would not have occurred if Madaule had not suddenly veered into Kawai's path. Accordingly, it cannot be reasonably said that Madaule's conduct was not a substantial factor contributing to the accident.

Indeed, Kawai's alleged conduct would have been, at most, a concurrent cause of death, which would not have relieved Madaule of culpability. Evidence that the victim "may have shared responsibility or fault for the accident does nothing to exonerate [a] defendant for his role" and is "not relevant." (*People v. Schmies* (1996) 44 Cal.App.4th 38, 51.)

Ultimately, to sufficiently break the chain of causation, a superseding cause must be an " ' "independent event" ' " that produces harm " ' "of a kind and degree so far beyond the risk the original [wrongdoer] should have foreseen that the law deems it unfair to hold him responsible." ' " (*People v. Brady* (2005) 129 Cal.App.4th 1314, 1325, citing the concurrence in *People v. Sanchez* (2001) 26 Cal.4th 834, 855.) Here, Madaule's act of suddenly veering across the double lines into the HOT lane at 35 to 40 miles per hour was itself dangerous to human life, regardless of the preceding behavior of any motorist directly in his path. That Kawai may have been straddling the HOT lane at 55 to 60 miles per hour is not sufficient to relieve Madaule of responsibility.

We find the trial court did not err in declining to give the causation instruction.

II. Fines and Fees

Madaule contends the $30 court facilities assessment, $40 court operations assessment, and $300 in fines should be vacated because he is entitled to a hearing on his ability to pay under *People v. Dueñas*.[4] We disagree.

The record reflects Madaule did not object at sentencing to the fines, fees, or assessments in the trial court. Therefore, he has forfeited this argument. (See *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1155 [issue forfeited where defendant failed to object to imposition of assessments and fines at trial].)

Additionally, nothing in the record indicates Madaule cannot afford to pay the fines, fees, and assessments imposed upon him. The mere fact that he was found indigent for the purposes of appointment of counsel on his behalf does not support the conclusion that he cannot afford a total of $370 in fines and fees over the course of three years. Unlike *Dueñas*, Madaule does not allege facts showing he had a history of being unable to pay debts, lacked stable housing, suffered from an illness impeding his ability to work, lacked savings or sellable assets, or needed to devote any of his income to child care. To the contrary, the record reflects that Madaule was employed at the time of the offense.

Accordingly, Madaule is not entitled to a remand for an ability-to-pay hearing.

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[4] *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1161.

DISPOSITION

The judgment and orders are affirmed.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.