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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFREDO GOMEZ,

Defendant and Appellant.

B269620

(Los Angeles County
Super. Ct. No. TA137290)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael J. Shultz, Judge. Affirmed.

Brad Kaiserman, 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, William H. Shin and Peggy Z.
Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Alfredo Gomez was convicted by a jury of assault with a deadly weapon and leaving the scene of an automobile accident resulting in injury to a person. Gomez contends his intentional conduct does not fall within the purview of California's hit-and-run statute. He also contends his sentence for leaving the scene of an accident should have been stayed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Gomez was charged in an amended information filed June 24, 2015 with assault with a deadly weapon, "to wit, [a] car/automobile" (Pen. Code, § 245, subd. (a)(1))¹ and leaving the scene of an automobile accident that resulted in an injury to another person (Veh. Code, § 20001, subd. (b)(1)). The information specially alleged in connection with the aggravated assault that Gomez had personally inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). In addition, the information specially alleged Gomez had suffered two prior serious felony convictions within the meaning of section 667, subdivision (a)(1), and two prior serious or violent felony convictions within the meaning of the three strikes law (§§ 667, subd. (b)-(j), 1170.12) and had served three separate prison terms for felonies (§ 667.5, subd. (b)). Gomez pleaded not guilty and denied the special allegations.

2. The Trial

According to the evidence at trial, on May 24, 2015 Gomez was in the passenger's seat of a car belonging to his fiancée, Viridiana C. Viridiana was in the driver's seat. The two argued

¹ Statutory references are to this code unless otherwise stated.

after Gomez accused Viridiana of cheating on him. Viridiana left the car and walked first to the train station and then to a convenience store. Gomez drove up to the convenience store, accelerated the vehicle toward Viridiana and ran over her. The impact tossed Viridiana in the air, causing her to hit the car's front windshield and hood and land on the pavement. Gomez made a U-turn and left the scene. Delfino Lopez, Jr., who witnessed the assault, testified Gomez was travelling between 20 and 30 miles per hour when his car struck Viridiana. Viridiana suffered a laceration to her ear requiring stitches, a fractured left shoulder and injuries to her head and knee.

Viridiana initially told police and a hospital social worker that Gomez had intentionally run her over with his car after their argument. She asked for and signed an emergency protective order to keep him away from her. Later, and at trial, she insisted the incident was an accident: She saw Gomez stop at the convenience store to buy beer and stood behind his car. Then, when Gomez left the store and returned to the car, he put the vehicle in reverse and hit her. Because she was short and wearing black clothing and the back window was tinted, it was unlikely Gomez saw her.

Gomez did not testify and did not call any witnesses.

3. The Verdict and Sentence

The jury convicted Gomez of assault with a deadly weapon and leaving the scene of an automobile accident resulting in injury. It found not true the special allegation in connection with the aggravated assault that Gomez had personally inflicted great bodily injury under circumstances involving domestic violence.

In a bifurcated proceeding Gomez admitted each of the prior conviction and prior separate felony prison term allegations.

The court struck one of the alleged prior qualifying strike convictions in furtherance of justice and sentenced Gomez as a second-strike offender to an aggregate state prison term of 21 years four months.²

DISCUSSION

1. *Vehicle Code Section 20001—California’s Hit-and-run Statute—Encompasses Intentional Conduct*

Vehicle Code Section 20001, subdivision (a), provides, “The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of [Vehicle Code] Sections 20003 and 20004.”³

² The court imposed the upper term of four years for the aggravated assault, doubled under the three strikes law, plus five years for each of the two prior serious felony convictions (§ 667, subd. (a)), and one year for each of two separate felony prison terms (§ 667.5, subd. (b)). The third alleged prison prior did not qualify under the statute. In addition, the court imposed a consecutive term of one year four months—one-third the middle term, doubled under the three strikes law for the Vehicle Code violation, the only charge at issue in this appeal.

³ Vehicle Code Section 20003 requires the driver of any vehicle involved in an accident to provide identifying details to any traffic or police officer on the scene and render reasonable assistance to any person injured in the accident. Vehicle Code Section 20004 requires the driver of any vehicle involved in an accident resulting in death to report the accident to the nearest office of the California Highway Patrol or duly authorized police authority.

Gomez contends that, in finding him guilty of assault with a deadly weapon, the jury necessarily found he did not hit Viridiana accidentally. If the collision was intentional, he argues, then he could not have left the scene of an “accident” in violation of section Vehicle Code section 20001.⁴

The identical argument was rejected in *People v. Jimenez* (1992) 11 Cal.App.4th 1611 (*Jimenez*), disapproved on another ground in *People v. Kobrin* (1995) 11 Cal.4th 416, 419, 427, fn. 7. As the *Jimenez* court explained, the legislative purpose of section 20001 was to prevent drivers from leaving the scene of an injury-producing “event” or “occurrence” without presenting proper identification and ensuring that necessary assistance would be provided without regard to the responsibility of the driver. (*Id.* at pp. 1625-1626 [adopting broad definition of term “accident”]; see *People v. Escobar* (1991) 235 Cal.App.3d 1504, 1509 [“gravamen of a [Vehicle Code] section 20001 offense . . . is not the initial injury of the victim, but leaving the scene without presenting identification or rendering aid”].) It would be wholly inconsistent with that purpose, the *Jimenez* court concluded, to apply a definition of “accident” that excluded intentional hit-and-run conduct: To “exclude those drivers who intended to cause an injury-producing occurrence from a duty imposed on all other

⁴ Although Gomez presents his argument as a challenge to the sufficiency of the evidence supporting his conviction, his contention as to the meaning of Vehicle Code section 20001 raises an issue of statutory interpretation that we review de novo. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311 [meaning of statute presents a question of law that is reviewed de novo by appellate court]; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432 [same].)

involved drivers would produce the absurd result that drivers with the highest level of fault for the injury-producing occurrence could shirk their responsibilities with impunity while those drivers who were merely negligent or without fault were burdened with the statute's requirements. Because such a construction of the statute would be absurd, unreasonable and contrary to the law's purpose, we hold that Vehicle Code section 20001 applies to all drivers of vehicles involved in injury-producing events," whether or not the incident was intentionally caused. (*Jimenez*, at p. 1626.)

Gomez insists that the common definition of "accident" is something "unexpected" or "unintentional" and urges us to reject the broader definition of that term adopted in *Jimenez*. We find the holding and analysis in *Jimenez* persuasive. Indeed, a number of appellate decisions from other jurisdictions have reached the same conclusion. (E.g., *State v. Silva* (Wash. Ct. App. 2001) 24 P.3d 477, 482 [106 Wash. App. 586] [we "hold that the word 'accident,' within the meaning of our hit-and-run statute, includes incidents arising from intentional conduct on the part of the driver and/or the victim"]; *Wylie v. State* (Alaska Ct. App. 1990) 797 P.2d 651, 658 ["in context then, an 'accident' is any incident in which someone suffers injury or death; and, 'a vehicle [is] involved in an accident' if there is a causal nexus between the vehicle and the injury or death"]; *State v. Parker* (Or. 1985) 704 P.2d 1144, 1148 [299 Or. 534] [intentional hit-and-run is encompassed by term "accident" in Oregon hit-and-run statute]; *State v. Smyth* (R.I. 1979) 397 A.2d 497, 499 [121 R.I. 188] ["the legislature intended the term 'accident' to include all automobile highway collisions—intentional as well as unintentional—where personal injury occurs"].)

Gomez concedes that, if we conclude his intentional conduct is encompassed by the term “accident” as used in Vehicle Code section 20001, substantial evidence supports the jury’s verdict on the hit-and-run count. We do.

2. *Gomez’s Sentence Does Not Violate Section 654*

Section 654 provides, “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . .” (*Id.*, subd. (a).) This provision has been interpreted to prohibit the imposition of separate punishment for two or more offenses arising either from the same act or from a series of acts constituting an indivisible course of conduct. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507; *People v. Latimer* (1993) 5 Cal.4th 1203, 1216.)

“Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*People v. Correa* (2012) 54 Cal.4th 331, 336; accord, *People v. Rodriguez, supra*, 47 Cal.4th at p. 507; *People v. Newman* (2015) 238 Cal.App.4th 103, 112.)

Gomez contends he engaged in a single act with a single intent and objective—to commit an aggravated assault and get away with it by fleeing the scene. The trial court found two separate acts with separate intents and objectives: The first was to commit an aggravated assault, which was completed as soon as Gomez accelerated the car toward Viridiana. (See *People v. Williams* (2001) 26 Cal.4th 779, 786 [“assault occurs whenever

“[t]he next movement would, *at least to all appearance*, complete the battery”’).) The second occurred when he left Viridiana injured and unattended at the scene. (*People v. Cowart* (2015) 238 Cal.App.4th 945, 953 [hit-and-run completed when defendant fled scene of injury accident without providing required information or rendering assistance].) Even if those separate acts do not compel a conclusion of separate intents and objectives as a matter of law, there certainly was substantial evidence to support the court’s finding in that regard. (See *People v. Butler* (1986) 184 Cal.App.3d 469, 470-471 [defendant’s sentence for both vehicular manslaughter and fleeing scene of accident did not violate § 654]; see generally *People v. Osband* (1996) 13 Cal.4th 622, 730-731 [trial court’s section 654 determinations reviewed for substantial evidence]; *People v. Andra* (2007) 156 Cal.App.4th 638, 640-641 [same].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

SMALL, J.*

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