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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ALEXY HOVSEPIANS, Defendant and Appellant.	B277993 (Los Angeles County Super. Ct. No. BA438547)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig E. Veals, Judge. Affirmed.

Mark McBride for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Alexy Hovsepians guilty of two counts of felony driving under the influence of alcohol (Veh. Code, § 23153, subds. (a), (b)).[1] He appeals the judgment, contending the evidence was insufficient to support the conclusion that while driving under the influence of alcohol, he "concurrently [did] any act forbidden by law." (*Ibid*.) We disagree and affirm.[2]

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[1] All subsequent undesignated statutory references are to the Vehicle Code.

[2] Defendant retained private counsel to represent him in this appeal. We observe that counsel's appellate brief is deficient in at least two key respects. First, the statement of facts contains *no* citations to the record; it thus runs afoul of rule 8.204(a) of the California Rules of Court, which provides that every appellate brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (See also Cal. Rules of Court, rule 8.360(a) ["briefs in criminal appeals must comply as nearly as possible with [rule 8.204]"].) Second, although defendant challenges the sufficiency of the evidence to support the verdict, he fails to recite *all* of the material evidence relevant to the issue on appeal. " 'When an appellant challenges [a judgment] as unsupported by substantial evidence in light of the record as a whole, it is [the] appellant's burden to demonstrate that the . . . record does not contain sufficient evidence to support the [verdict].' [Citation.] A recitation of only the part of the evidence that supports the appellant's position ' is not the "demonstration" contemplated under the above rule. [Citation.] Accordingly, if, as [defendant contends], "some particular issue of fact is not sustained, [he is] required to set forth in [his] brief *all* the material evidence on the point and *not merely* [*his*] *own evidence*. Unless this is done the error is deemed to be waived." ' [Citations.] Essentially, this rule rests on the premise that if the appellants fail to present us with all the relevant evidence, then the appellants *cannot* carry their

FACTUAL AND PROCEDURAL BACKGROUND

Viewed in accordance with the usual standards governing appellate review (*People v. Johnson* (2003) 113 Cal.App.4th 1299, 1303–1304), the evidence relevant to the issues presented on appeal established the following.

In the early morning hours of July 25, 2015, defendant, who was driving westbound on Los Feliz Boulevard in Glendale, crossed the double-yellow lines separating the westbound and eastbound traffic, hitting head-on a Toyota Prius traveling in the opposite direction.[3] The Prius was driven by Gor Ghazaryan and was occupied by three passengers—Sarian Sarmen, Vahe Minassian, and Arin Agajohn. Ghazaryan briefly lost control of the Prius, which came to rest in front of a Del Taco restaurant.

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burden of showing the evidence was insufficient to support the [verdict] because support for [the verdict] may lie in the evidence the appellants ignore." (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 749–750; accord *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1430 ["It is not enough for defendant to simply say 'there was no evidence'; instead, 'he must *affirmatively demonstrate* that the evidence is insufficient' on the point in dispute."].)

Because defendant fails to support his analysis with all of the relevant facts adduced at trial and appropriate citations thereto, we may deem his appellate arguments forfeited. (E.g., *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) However, because of the important liberty interests at issue, we have independently reviewed the record and address defendant's contentions on the merits.

[3] We discuss the collision testimony in greater detail below.

Los Angeles Police Department (LAPD) Officers Edward Park and Zhen Zhao arrived shortly after the collision. Defendant told the officers he had been making a left turn when Ghazaryan's car hit him. Officer Park observed that defendant's eyes were bloodshot, his gait was unsteady, and he had alcohol on his breath. Defendant agreed to submit to a field sobriety test, but was unable to pass it. Officer Park arrested defendant for driving under the influence of alcohol and brought him to the police station. There, defendant provided a breath sample, which showed his blood-alcohol level was between .19 and .20 percent.

As a result of the collision, Minassian sustained injuries to his left knee, lower back, and shoulder, for which he received medical treatment for several months. Sarmen sustained a cut to his forehead, which required approximately 18 stitches. Agajohn suffered an injury to his legs.

Trial was by jury. Defendant was convicted of driving under the influence of an alcoholic beverage and driving with a blood alcohol level exceeding .08 percent (§ 23153, subds. (a), (b)); the jury further found true the allegation that in the commission of these offenses, defendant caused bodily injury to more than one victim (§ 23558). The trial court sentenced defendant to two concurrent two-year terms in state prison and imposed a victim restitution fine, a parole revocation assessment, a security assessment, and a criminal conviction securities assessment.[4]

Defendant timely appealed from the judgment.

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[4] The court struck the section 23558 multiple victim enhancement.

DISCUSSION

Defendant contends there was insufficient evidence to support the second element of the offenses of which he was convicted—that is, that while driving under the influence of alcohol, he "concurrently [did] any act forbidden by law." (§ 23153, subds. (a) & (b).) Defendant's claim is without merit.

A. Standard of Review

When determining whether the evidence was sufficient to sustain a criminal conviction, " ' "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.]' " (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1104; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) We presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Medina* (2009) 46 Cal.4th 913, 919.) Reversal is not warranted unless it appears " 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Zamudio* (2008) 43 Cal.4th 327, 357.) The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence. (*People v. Brown* (2014) 59 Cal.4th 86, 106.) We must accept logical inferences the trier of fact might have drawn from the evidence even if we would have concluded otherwise. (*People v. Solomon* (2010) 49 Cal.4th 792, 811–812.)

B. Substantial Evidence Supported the Jury's Verdict

Defendant was convicted of driving under the influence of alcohol and causing bodily injury, and of driving with an

excessive blood-alcohol level and causing injury, in violation of section 23153, subdivisions (a) and (b).[5] To establish a violation of section 23153, the People had to establish three elements: (1) defendant drove a vehicle either while under the influence of an alcoholic beverage or drug (subd. (a)), or "while having 0.08 percent or more, by weight, of alcohol in his or her blood" (subd. (b)); (2) while so driving, defendant committed an act that violated the law, or failed to perform some duty required by law; and (3) as a proximate result of defendant's violation of law or failure to perform a duty, another person was injured. (*People v. Givan* (2015) 233 Cal.App.4th 335, 349 (*Givan*).)

Defendant concedes the first and third elements—i.e., that he drove while intoxicated and that other persons were injured. He contends, however, that there was insufficient evidence of the second element—i.e., that he concurrently committed an act that violated the law.

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[5] Section 23153 provides:

"(a) It is 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.

"(b) It is 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."

" ' "To satisfy the second element, the evidence must show an unlawful act or neglect of duty *in addition* to driving under the influence. [Citation.]" (*People v. Weems* (1997) 54 Cal.App.4th 854, 858, fn. omitted.) 'The unlawful act or omission "need not relate to any specific section of the Vehicle Code, but instead may be satisfied by the defendant's ordinary negligence. [Citations.]" ' (*Ibid*., quoting *People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1185.)" (*Givan*, *supra*, 233 Cal.App.4th at p. 349.)

Defendant appears to concede that crossing into the opposing lane of traffic across the double-yellow line would violate the law, but he contends there was "no evidence . . . that proved beyond a reasonable doubt" that he caused the collision by doing so. Instead, he says, all of the testimony "indicated uncertainty with respect to the position of [defendant's] vehicle." We do not agree. To the contrary, it was undisputed that immediately prior to the accident, defendant was traveling westbound, and the Prius was traveling eastbound. Officer Zhao testified that the two vehicles sustained major damage to their front ends, thus suggesting a head-on collision. Further, two of the Prius's occupants, Ghazaryan and Minassian, testified that the collision occurred in the eastbound lane—that is, the lane in which the Prius was traveling. Specifically, driver Ghazaryan testified that he was traveling eastbound when defendant, traveling westbound, came "straight on me" and struck the front of Ghazaryan's Prius. Ghazaryan described the point of impact as in "my own lane . . . . Basically he hit my car in [the] fast lane, me being within two lines in that lane." Passenger Minassian similarly testified that when he first saw defendant's car, it appeared to be heading in the opposite direction that the Prius

was traveling, but then made a "sudden turn," striking the Prius "toward the front of the vehicle" in the eastbound lane of traffic.

Based on this evidence, the jury could reasonably have inferred that the collision occurred because defendant drove across the double-yellow line into oncoming traffic. Such conduct violated, among other things, section 21650, which requires vehicles to be driven "upon the right half of the roadway;" and section 21651, which prohibits a vehicle from driving "over, upon, or across the dividing section" of a divided highway. (See, e.g., *People v. Tucker* (1948) 88 Cal.App.2d 333, 340 [evidence supported the conclusion that intoxicated defendant caused injury to others while doing an act "forbidden by law," where he was involved in a collision in westbound lane of traffic while traveling east]; see also *Hulbert v. Laturco* (1963) 221 Cal.App.2d 373 [evidence was sufficient to support the trial court's finding of negligence where plaintiff testified that defendant's vehicle struck plaintiff's on plaintiff's side of a divided highway].)

Accordingly, viewed in the light most favorable to the judgment, the evidence was sufficient to establish that defendant committed an act that violated the law while driving under the influence of alcohol.

DISPOSITION

The judgment is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

CURREY, J.*

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