

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ALEJANDRO LIMON,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Respondents.

B236612

(Los Angeles County  
Super. Ct. No. BS127791)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
James Chalfant, Judge. Affirmed.

Gary Orville Ingemunson for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Gregory P. Orland, Deputy City Attorney,  
for Defendants and Respondents.

---

The Chief of Police of the City of Los Angeles terminated appellant Alejandro Limon as a police officer. The trial court denied Limon's petition for a writ of mandate and entered judgment for respondent City of Los Angeles. We find that there is substantial evidence that supports the trial court's decision and therefore affirm.

### **INTRODUCTION**

The disciplinary proceedings that led to Limon's termination arose out of an accident on the freeway on October 15, 2008, after Limon, then off duty, and others had attended a baseball game at Dodger Stadium. Limon, who admitted to having drunk too much alcohol at the game, was charged with operating a motor vehicle while under the influence of alcohol and with providing false information to the California Highway Patrol (CHP). The Board of Rights found Limon guilty of four of the five counts with which he was charged.<sup>1</sup> Limon's termination by the Chief of Police followed.

### **FACTS**

#### *Limon's personal background*

Limon entered the Marine Corps at the age of 17, and served for eight years, including a tour in Iraq. He received several commendations in the Marine Corps and served for two and one-half years as an instructor. When he returned from Iraq, he applied to the Los Angeles Police Department (LAPD).

As of January 2010, Limon had served three years in the LAPD. He received a number of commendations during that time and was promoted to Police Officer II. His personnel file did not include any negative information, save for one very minor matter.

In October 2008, Limon was going through a rough divorce from his wife, who he stated was trying to take his children away from him. He was dating Esther Diaz at this time.

---

<sup>1</sup> The charges are detailed below.

### *The accident*

Diaz came to Limon's house prior to the Dodger game. Limon and Diaz drove to the game in Limon's Ford Bronco, which was high off the ground. Diaz left her car at Limon's house. Limon had arranged to meet his cousin Victor Meza (Victor) and his wife Veronica Meza (Veronica) at the game. Once at the stadium, Limon, Diaz, the Mezas and two of the latter's friends watched the game.

It is conceded that, at the game, Limon drank to the point he became intoxicated; it was stipulated that his blood alcohol reading at the time of the accident was .25.

Once the game was over, Limon, Diaz, Victor and Veronica went to the parking lot, where they waited for a short while to let the traffic thin out. They decided to go somewhere to get something to eat.

Victor told Limon that he, Limon, should not drive. Limon testified that he agreed, saying that he was too drunk to drive.

Diaz, Limon and Veronica all testified that Diaz got into the driver's seat of Limon's car and that Limon got into the passenger seat in front. Diaz characterized herself as the designated driver, in light of Limon's intoxication. Veronica said for Diaz and Limon to follow her because she knew where they were going. From this point on, Limon testified that he did not recollect anything until he heard Diaz telling him, at the site of the accident, to wake up.

According to Diaz, it was difficult for her to get into the Bronco because it was so high; she had never driven the car before. She testified that she had no difficulty reaching the gas and brake pedals, nor did she have to adjust the seat.<sup>2</sup> Diaz testified that she was driving because everyone knew that Limon was too drunk to drive. According to Diaz, Limon fell asleep when he got into the car.

Diaz got onto the 110 freeway heading south. She was in the third lane from the left and was driving at about 65 m.p.h. Both of them had their seat belts fastened.

---

<sup>2</sup> The position of the driver's seat became a contested issue.

Another vehicle came towards the Bronco from the left, appearing to cut off the Bronco. Diaz steered sharply to the left, which caused the Bronco to go out of control. The CHP report shows that the Bronco hit an ascending dirt embankment on the right side of the road, then veered across the entire roadway and hit the wood/metal guardrail on the left side, finally tipping over on its right side and coming to a rest in the middle of the road. The first call to the CHP reporting the accident was logged in at 9:52 p.m.

Diaz hit her head on the steering wheel and may have been unconscious for a short while. She woke up when she heard someone screaming to call 911; then someone asked whether she was okay. She took off her seat belt. Limon was asleep; she woke him up and took off his seat belt. They left the vehicle through the rear window.

Carlos Fraire, a substitute teacher, witnessed the accident. He was parallel to the Bronco at one point but could not tell the gender of the driver, whose face he could not see. However, he testified that the driver had long flowing (or blowing) hair. Limon has a close-cropped military haircut; Diaz has long hair. Fraire thought he had a view of the Bronco for about six seconds. Fraire thought that the Bronco was being driven recklessly.

#### *Aftermath*

The fire department was first on the scene. Diaz and Limon were taken into the ambulance where their vital signs were checked.

CHP Officers Aaron J. Warmerdam and Yevgeniy Khodak arrived on the scene after the fire department. Warmerdam had the laboring oar when it came to interviewing Diaz and Limon, and we turn to his testimony.

Once on the scene, Warmerdam saw Limon walking towards him, exhibiting signs of intoxication, e.g., an unsteady gait and the odor of alcohol. Both men entered the ambulance, where they sat down in the back. Warmerdam asked Limon who had been driving; the answer was Diaz. Limon acknowledged that he was the registered owner of the Bronco. After Limon identified himself as an LAPD officer and after Warmerdam had taken possession of the gun Limon was carrying, Diaz entered the ambulance.

Warmerdam asked Diaz if she had been driving. Warmerdam described her reactions: “And she was very hesitant, very reluctant to answer any of my questions. Each time after I asked her a question, she paused and would look at Mr. Limon. I asked her if she was driving the vehicle at the time of the collision, and she had no response. Mr. Limon would interject and say, ‘I don’t know.’” Warmerdam asked how fast she was driving, if she was driving. She paused again and looked at Limon, who again interjected with “‘I don’t know.’”

Warmerdam now took Diaz out of the ambulance, leaving Limon behind. He again asked her whether she was driving. She said: “‘I do not want to start any drama.’” When asked what she meant, she said that Limon would lose his kids and his job. Diaz was pressed again by Warmerdam: “‘Were you driving the vehicle at the time of the collision, yes or no? And she shook her head no.’” Warmerdam elaborated that she shook her head from left to right “multiple times.”

Warmerdam now examined the Bronco and found that the driver’s seat was all the way back. Diaz is five feet seven inches. In Warmerdam’s opinion, she could not have reached the pedals if she was in the driver’s seat. Limon is six feet.

Warmerdam returned to Limon and began to question him. Limon refused to answer, declined to take a field sobriety test and began to spout vulgarities at the CHP officers. Warmerdam placed him under arrest. The ambulance now took Limon to California Hospital, where Limon met Victor and Veronica, whom he had called from the accident scene. Limon walked away from the hospital (the charge that he fled from custody was based on this fact) and was driven by Victor to the LAPD station. On the way, Veronica heard Limon saying something about Limon’s driving the Bronco. Veronica testified it was possible that Limon had told Victor that he, Limon, had been driving.

The CHP officers reacquired custody over Limon at the LAPD station. They drove to the CHP station with Limon, who continued to make disrespectful comments about the CHP officers and the CHP. The officers also heard Limon saying that he, Limon, was “fucked.” While at the CHP station, Limon blurted out: “‘Did I roll my

truck?”” He corrected this to saying, ““I didn’t think that he rolled my truck”” and changed it yet again to ““I didn’t think she rolled my truck.”” Warmerdam also noted that Limon’s left shoulder had a red mark, indicating use of a left shoulder harness, i.e., the left or driver’s seat of the Bronco.

Officer Khodak, who spent part of the time directing traffic at the scene, confirmed Warmerdam’s account of the events and did not contribute anything new, with one exception. He testified that Limon had a fresh cut near his right eye, on the right side of his face.

LAPD’s expert on traffic collisions, Officer Janna Beard, disagreed with Warmerdam that the mark on Limon’s left shoulder was left by a seat belt because such injuries are not circular but are elongated.

Unsurprisingly, Diaz denied that she shook her head when Warmerdam asked her if she was driving. She energetically maintained during the hearing that she, not Limon, was at the wheel of the Bronco when it crashed. She admitted, however, making the “no drama” statement, explaining that she did not want more drama with Limon’s ex-wife.

### **THE CHARGES BEFORE THE BOARD OF RIGHTS**

Limon was charged with operating a private motor vehicle under the influence of alcohol while off duty and with being arrested for this offense (counts 1 and 2); with providing false information to the CHP (count 3); with making inappropriate remarks to CHP officers (count 4); and with fleeing from custody (count 5).

As noted, he was found guilty of the first four counts and not guilty of count 5. Count 5 was based on the theory that Limon, after having been dropped off at California Hospital, fled from there. We agree that surveillance camera footage used to support this charge was equivocal and that the decision of the Board of Rights on this count was appropriate.<sup>3</sup>

---

<sup>3</sup> Four criminal misdemeanor charges were eventually dismissed and Limon pleaded guilty to being drunk in public, for which he was placed on probation. His driver’s license was suspended.

## **THE TRIAL COURT’S RULING**

The trial court noted, correctly, that it was required to independently review the administrative decision.<sup>4</sup> The court’s detailed statement of decision, which includes not only a summary of the evidence but a thorough analysis of that evidence, shows that the court fully discharged its obligations in reviewing the decision to terminate Limon.

The salient aspect of the trial court’s decision is the recognition that the overarching factual issue is who was driving the Bronco. Three of the four charges of which Limon was found guilty are predicated on the fact that he was the driver. We agree that this is the dispositive factual question. This is all the more true since the contention on appeal is that the court’s conclusion that Limon was the driver is not supported by substantial evidence.

We are therefore not reviewing a question of law but one of fact.

## **DISCUSSION**

### *The judgment is supported by substantial evidence*

In an appeal from a judgment denying an administrative writ of mandate, “[a]fter the trial court has exercised its independent judgment upon the weight of the evidence, an appellate court need only review the record to determine whether the trial court’s findings are supported by substantial evidence.” (*Bixby v. Pierno*, *supra*, 4 Cal.3d 130, 143, fn. 10.) Limon recognizes that this is the standard of review in this court.

The evidence that supports the judgment begins with Limon’s own statements. On the way to the LAPD station from the hospital, Veronica heard him saying something about driving his Bronco, which she stated confused her because she allegedly saw him

---

<sup>4</sup> “By carefully scrutinizing administrative decisions which substantially affect vested, fundamental rights, the courts of California have undertaken to protect such rights, and particularly the right to practice one’s trade or profession, from untoward intrusions by the massive apparatus of government. If the decision of an administrative agency will substantially affect such a right, the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo.” (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143, fns. omitted.)

getting into the passenger seat. The statement at the CHP station “Did I roll my truck?” is certainly a damaging admission. Finally, Veronica conceded that it was possible that Limon had told Victor that he had been driving at the time of the accident. Considering that Veronica, Diaz and Victor were all intent on protecting Limon, these statements were damaging evidence against Limon.

The next significant evidence is Diaz’s admission to Warmerdam, on the accident scene, that she was not driving the Bronco. She was at this point in time outside the ambulance and not in Limon’s company, which evidently made a difference. There was nothing equivocal about this admission.

Both the Board of Rights and the trial court found Warmerdam to be credible, a finding that is not for us to disturb. (*Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243 [the trier of fact is the judge of the credibility of the witnesses].) Even if we were inclined to revisit this issue, and we are not so inclined, we find nothing to indicate any sort of bias, or any reason, for Warmerdam not to relate events as they actually happened. Faced with a man who was obviously intoxicated, it made good sense to get immediately to the bottom of the issue of who had been the driver. As it turned out, Warmerdam’s tenacity produced results.

The physical evidence points to Limon, not Diaz. The driver’s seat was all the way back, making it difficult, if not impossible, for Diaz to reach the pedals.

Circumstantial evidence of Limon’s apprehensions that he would be identified as the driver is his attempt to control the interview of Diaz by Warmerdam in the ambulance right after the accident. If he had actually been the passenger and not the driver, there would not have been any reason for him to attempt to steer the interview, as he blatantly sought to do.

In sum, there is direct testimonial evidence that Limon was the driver of the Bronco when the accident occurred. There is also physical evidence of this fact. Finally, there is circumstantial evidence that Limon attempted to mislead Warmerdam’s efforts to determine whether it was Limon or Diaz who drove the Bronco. Taken as a whole, this is substantial evidence that Limon was the driver.



*The respondents' brief is defective*

Before addressing Limon's specific contentions, we find it advisable to note that respondents' briefing of the facts is singularly unhelpful. We note this circumstance in order to prevent a repetition of what happened in this appeal in future cases.

Respondents' brief simply copies the entirety of the statement of decision and presents this as the statement of facts. But when, as in this case, the contention on appeal is that the judgment is not supported by substantial evidence, one must go into the record itself in order to determine whether the findings of the statement of decision are supported by substantial evidence. In other words, it is the facts appearing in the record that must be briefed in order to enable the reviewing court to determine whether the statement of decision is supported by substantial evidence. We chose not to strike the respondents' brief in order not to impose additional expense on the parties; nonetheless, we note that the statement of facts contained in the respondents' brief is unacceptable.

*Limon's contentions are without merit*

While Limon accepts that the substantial evidence standard applies, his actual contentions misapply this standard. He selects facts that support his side of the case, which the trial court rejected, and claims that these facts show that he was not the driver. However, it is immaterial that there is evidence that supports Limon's side of the case. What matters is whether there is evidence, *contradicted or not*, that supports the judgment. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429 [the reviewing court determines whether there is substantial evidence, contradicted or uncontradicted, that supports the judgment].) As we have noted above, there is such evidence in this case.

Thus, Limon contends that the gash to the right side of his head is evidence of the fact that he was sitting in the passenger's seat when the vehicle fell onto its right side. He buttresses this argument with the circumstance that blood was found on the B pillar of the vehicle, which is on the right side of the car. He claims this is the only physical evidence of where he was sitting.

Far more persuasive physical evidence was that the driver's seat was all the way back, in a position where Diaz would have been unable to reach the pedals. In any event, we agree with the trial court that, given the violence of the vehicle's movements, there is no telling how Limon acquired this gash. But, the question is not whether we agree with the trial court. Even if this evidence favors Limon and thus contradicts the trial court's findings, we disregard it when we apply the substantial evidence test.

The same is true of Fraire's testimony that he saw that the driver of the Bronco had flowing hair, which suggests that Diaz was driving. All conflicts in the evidence must be resolved in favor of the respondents. (*Crawford v. Southern Pacific Co.*, *supra*, 3 Cal.2d 427, 429.) Just as with the gash on Limon's face, this evidence is to be disregarded. In any event, Fraire's glimpse of the Bronco was fleeting at best and he admitted that he did not see the driver's face.

Were we the trial court, we would place little credence in Veronica's testimony that she saw Limon get into the passenger seat of the Bronco. Veronica, like Victor and Diaz, made every effort to help Limon with favorable testimony and their credibility is therefore questionable. But it is not our role to make credibility determinations. Instead, we accept, as we must, the trial court's determination that Veronica was not credible. (*Maslow v. Maslow*, *supra*, 117 Cal.App.2d 237, 243.) In any event, even if we accept her testimony as true, we must disregard it under the substantial evidence standard.

We find somewhat puzzling Limon's contention that his testimony does not "arise to substantial evidence." (Emphasis omitted.) He is not trustworthy, Limon contends, because he was drunk and had suffered a head injury. We are unaware of any rule, policy or precedent that would permit us to simply ignore Limon's testimony. If Limon's counsel now thinks that Limon's testimony was damaging, it is too late to undo the decision that Limon should take the stand.

We reject the claim that interpreting Limon's statement "Did I roll my truck?" as an admission requires speculation and guesswork. There is absolutely nothing speculative about such an interpretation. The question Limon posed and his choice of

words were what one would expect to hear from a man who had been driving in a serious accident while clearly intoxicated. The question is very revealing at multiple levels.

Finally, Limon contends that there is no substantial evidence that shows that Diaz was biased and not credible. We note in passing that the trial court dismissed Diaz's statement as a lie that the bruise on Limon's shoulder was a hickey. As we have already noted, it is not for us to pass on the credibility of witnesses. Thus, we disregard Limon's attempts to rehabilitate Diaz. The record speaks eloquently about the inconsistency with which she conducted herself from the moments following the accident to the hearing before the Board of Rights.

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.