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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HERMIN MARTIN TRUJILLO
HENDERSON,

Defendant and Appellant.

2d Crim. No. B291522
(Super. Ct. No. 2016018638)
(Ventura County)

Hermin Martin Trujillo Henderson appeals a judgment following conviction of felony fleeing the scene of an accident that resulted in death (count 1), and misdemeanor destruction or concealment of evidence (count 2). (Veh. Code, § 20001, subd. (b)(2); Pen. Code, § 135.)

This appeal concerns Henderson's tragic and fatal traffic collision with Jonathan H., a juvenile bicyclist, just before midnight on February 18, 2016, in an agricultural area in Ventura County. The 14-year-old victim suffered extreme trauma and died immediately. A nearby surveillance camera captured the collision between the flatbed tow truck that

Henderson was driving and the victim. Henderson did not stop at the scene of the accident, and on the following day he pressure-washed the tow truck and removed its damaged license plate.

Henderson now raises issues regarding the legal theory applied by the trial court and the sufficiency of evidence to support the knowledge element of his conviction. We reject his contentions, direct that the trial court prepare an amended abstract of judgment to reflect the assessments imposed at sentencing, and otherwise affirm.

FACTUAL AND PROCEDURAL HISTORY

Henderson owned “Double R Towing,” a tow truck business located in Ventura. In the late evening of February 18, 2016, he was driving one of his large flatbed tow trucks when he struck Jonathan H. at the intersection of Telegraph Road and Saticoy Avenue in Ventura.

Ventura Police Sergeant Michael Brown responded to the accident. He found the body of Jonathan H. approximately 100 feet from the area of impact. The juvenile was wearing dark-colored clothing, including a black windbreaker, a white T-shirt, dark jeans, and black non-reflective sneakers. He also wore earbuds and his cellular telephone was in use. Brown found a black bicycle frame approximately 221 feet from the area of impact and other bicycle parts scattered nearby. The bicycle did not have a headlight. The intersection was remote and surrounded by agricultural fields.

Based upon the evidence at the scene and a surveillance video-recording obtained from a neighboring warehouse, Brown concluded that Henderson’s tow truck collided with Jonathan H. at 11:57 p.m. He described the accident as “both of them appeared to be coming in the intersection at the same time.” The

tow truck was a flatbed truck with a loud engine. The long bed of the truck could transport a full-length car or a pickup truck.

At the time of the collision, Henderson faced a green traffic signal and Jonathan H. was crossing the intersection against a red traffic signal. Henderson was driving at 58 miles per hour and Jonathan was cycling at 16 to 17 miles per hour. At approximately 62 feet after impact, Henderson activated his brake lights for three seconds. The lights then deactivated and Henderson continued driving eastbound on Telegraph Road. Brown opined that Henderson applied the truck brakes because he heard “something.” Brown added that the brake lights deactivated “in the ballpark of where the bike was coming out of the back side of the truck.”

The video-recording also reflects that another vehicle does not enter the intersection until approximately two minutes after the accident, or one and one-half miles behind Henderson’s truck. This vehicle straddled Jonathan H.’s body and continued through the intersection. Soon after, two additional vehicles entered the intersection and stopped. These drivers saw Jonathan H.’s body and called for emergency assistance.

As part of his investigation, Brown and a police cadet recreated the accident. When Brown approached the intersection in the tow truck, he could barely see the cadet-bicyclist. According to the video-recording, Jonathan H. leaned his body to the left just before impact, and thus his height would be even lower. Brown concluded that the parties could not see each other until two seconds prior to the collision. He also estimated that the driver of the tow truck could not see objects behind the truck until the objects were 20 to 40 feet distant.

Henderson’s towing company held a towing service contract with the city of Ventura. Consequently, Henderson was friendly

with many law enforcement officers. In later conversations with police officers, Henderson acknowledged that he was driving the tow truck during the night of the collision.

At 4:30 p.m. on February 19, 2016, Henderson telephoned Ventura Police Commander Thomas Higgins and asked to speak with him. Higgins and Brown drove to Henderson's tow lot and Higgins spoke with Henderson in a conversation recorded by Higgins's body camera. Henderson stated that he was driving the previous evening to assist another police officer jump-start his vehicle. While passing through the intersection, he felt "a thump" and suspected he may have struck a dog or small animal. Henderson stated, "It was more like a bump, like something went across either the rear-end or the . . . undercarriage or the tanks in the back. And I didn't think nothing of it" He then continued driving toward Oxnard.

Henderson invited Higgins to inspect the bumper of the tow truck. Higgins did so but did not observe any fresh damage. Brown noticed, however, that the front license plate had been replaced with the rear license plate. Henderson stated that he did not see a bicyclist or pedestrian in the intersection and did not think that he had struck someone.

Henderson stated that he learned of the accident several hours before he called Higgins the afternoon of February 19, 2016. He explained that a driver-employee, Sonny Rios, informed him that the victim was a 14-year-old boy and Rios's relative. Rios said that the collision involved a white flatbed truck and that there was a witness to the accident. Henderson then telephoned his attorney after speaking with Rios.

On February 22, 2016, Brown interviewed Henderson in the presence of his attorney. Henderson stated that he thought he had struck a dog or a pothole in the intersection while driving

to jump-start an officer's vehicle. He heard a thump but no other noise. Henderson then looked in his side-view mirror (the truck did not have a rear-view mirror) and saw a vehicle approximately 100 to 200 yards behind him. He decided to watch that vehicle to decide if an object lay in the roadway. When the vehicle proceeded through the intersection, Henderson assumed "it's nothing."

The next morning, Henderson cleaned and inspected the tow truck, as well as a second tow truck. He explained to Brown that he had California Highway Patrol inspections scheduled for the two trucks in one month's time. Henderson claimed that he applied a pressure washer to the underside of the two trucks to inspect for air leaks.

Henderson stated that on the morning of February 19, 2016, Rios telephoned him and informed him that Rios's relative, Jonathan H., had been killed in a traffic accident. Henderson informed Brown that he then realized that he had been involved in a collision. He telephoned his attorney and then changed the bent or crinkled front license plate of the tow truck by replacing it with the rear license plate which lacked registration tags. Henderson later retrieved the damaged license plate and gave it to law enforcement.

During another police interview held on May 3, 2016, Henderson informed Brown that he learned of the accident shortly before noon on February 19, 2016. He stated that Rios informed him of the accident and that he telephoned his attorney before noon that day.

Cellular telephone records established telephone calls between Henderson and Rios at the time of the collision, at 5:27 a.m. the following morning, and calls nearly every hour

throughout February 19, 2016. Henderson's attorney telephoned him at 10:22 a.m. on February 19, 2016.

In the late evening of February 19, 2016, Brown examined Henderson's tow truck. He found the underside of the driver's side of the truck clean and the metal bare; the section underneath the passenger side was dirty and greasy. The exterior of the truck appeared to have been recently cleaned. Brown opined that the truck had been pressured-washed. A surveillance video from an equipment storage yard reflected that Henderson drove into the yard that afternoon and left approximately 90 minutes later. The truck was dripping water when Henderson left the yard.

Following a court trial, the court found Henderson guilty of felony fleeing the scene of an accident that resulted in death (count 1), and misdemeanor destruction or concealment of evidence (count 2). (Veh. Code, § 20001, subd. (b)(2); Pen. Code, § 135.) It sentenced Henderson to a two-year prison term for count 1 and a 30-day sentence to be served concurrently for count 2. The court also imposed a \$300 restitution fine, a \$300 parole revocation restitution fine (suspended), a \$80 court operations assessment, and a \$60 court facilities assessment. (Pen. Code, §§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Henderson appeals and contends that: 1) the trial court erred by convicting him with an improper legal theory, and 2) insufficient evidence exists that he knew or reasonably should have known that he was involved in an injury or fatal accident at the time. Henderson asserts that these errors constitute prejudicial federal and state constitutional error in violation of due process of law.

DISCUSSION

I.

Henderson argues that the trial court applied an improper legal theory to convict him of fleeing the scene of an injury or fatal accident. He relies upon the trial judge's comment that "[k]nowing the exact moment that Mr. Henderson knew he was involved in a fatality accident is very, very difficult." Henderson adds that the prosecution proposed several theories upon which the court could convict him and his attorney did not emphasize the element of knowledge of injury or death at the time of the accident.

Following the trial judge's comment, the trial judge specifically found that Henderson knew he was involved in a fatality accident because "the brake lights [were] illuminating from his vehicle right after the impact. . . . [T]here's no doubt that he knew that something out of the ordinary had happened when he cleared that intersection."

Long-established law has held that to be convicted of fleeing an injury or fatal accident, a driver must have knowledge of an injury or fatality when he leaves the scene. (*People v. Nordberg* (2010) 189 Cal.App.4th 1228, 1237; *People v. Harbert* (2009) 170 Cal.App.4th 42, 53; *People v. Holford* (1965) 63 Cal.2d 74, 80 ["criminal liability attaches to a driver who knowingly leaves the scene of an accident if he actually knew of the injury or if he knew that the accident was of such a nature that one would reasonably anticipate that it resulted in injury"].) "Although a knowledge requirement is not specifically mentioned in *any* of the subdivisions of [Vehicle Code] section 20001, well-settled case law has established that 'knowledge of injury is an essential element of the crime proscribed by [Vehicle Code section 20001].'" (*Nordberg*, at p. 1237.)

We presume the trial court understands and applies the law properly in the absence of evidence otherwise. (*Walton v. Arizona* (1990) 497 U.S. 639, 653 [“Trial judges are presumed to know the law and to apply it in making their decisions”], overruled on other grounds by *Ring v. Arizona* (2002) 536 U.S. 584; *Ross v. Superior Court* (1977) 19 Cal.3d 899, 913). Moreover, a trial judge’s remarks in a bench trial cannot impeach the court’s reasoning or findings unless the remarks unambiguously disclose the court applied an erroneous interpretation of the law. (*People v. Tessman* (2014) 223 Cal.App.4th 1293, 1303.) Here, “taken as a whole,” the court’s remarks do not disclose an incorrect understanding of the elements of fleeing the scene of an injury or fatal accident. (*Id.* at p. 1302.) The court’s statements regarding Henderson’s actions the following day plainly are directed to his consciousness of guilt regarding count 1, as well as to the destruction of evidence, count 2.

II.

Henderson asserts that insufficient evidence exists that he knew, at the time of the accident, that he was involved in a traffic collision. He relies upon the evidence that he heard only “a thump” when he drove through the intersection, the roadway was dark and the area was agricultural, he did not see Jonathan H. or his bicycle, and he learned of the collision the following day when speaking with his employee.

In reviewing the sufficiency of evidence to support a conviction, we examine the entire record and draw all reasonable inferences therefrom in favor of the judgment to determine whether there is reasonable and credible evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Brooks* (2017) 3 Cal.5th 1, 57; *People v. Johnson* (2015) 60 Cal.4th 966, 988.) Our review is the same

in a prosecution primarily resting upon circumstantial evidence. (*Johnson*, at p. 988.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*People v. Albillar* (2010) 51 Cal.4th 47, 60; *People v. Young* (2005) 34 Cal.4th 1149, 1181 [“Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact”].) We must accept logical inferences that the trier of fact might have drawn from the evidence although we would have concluded otherwise. (*People v. Streeter* (2012) 54 Cal.4th 205, 241.) “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding.” (*Albillar*, at p. 60.) Moreover, the testimony of a single witness is sufficient to prove a fact. (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.)

The sufficiency of evidence in a particular case depends upon the factual circumstances in that case. (*People v. Thomas* (1992) 2 Cal.4th 489, 516-517.) A finding of sufficiency in one case does not suggest that weaker factual circumstances in another case will not support a conviction. (*Id.* at p. 516.) In our review, we focus upon the evidence that was presented, rather than evidence that might have been but was not presented. (*People v. Story* (2009) 45 Cal.4th 1282, 1299.)

Vehicle Code section 20001, subdivision (a) requires a driver involved in an injury accident to stop the vehicle at the scene of the accident and fulfill the reporting requirements of Vehicle Code sections 20003 and 20004. “Implicit in [the reporting] statutes is the obligation of the driver to fulfill their requirements as soon as reasonably possible.” (*People v. Flores* (1996) 51 Cal.App.4th 1199, 1204.)

To be culpable for fleeing the scene of an injury accident, the driver must have knowledge of the accident and the injury or fatality when he leaves the scene. (*People v. Hamilton* (1978) 80 Cal.App.3d 124, 132.) “[I]n order to convict a driver of a vehicle of felony hit-and-run driving it is essential that the driver knows that an accident has occurred . . . , knows that he was involved in the accident . . . , and knowingly leaves the scene of the accident either with knowledge that the accident resulted in injury or with knowledge that the accident was of such a nature that one would reasonably anticipate that the accident resulted in injury to another.” (*Ibid.*, citations omitted.) The requisite knowledge may be actual or constructive and may be proved by circumstantial evidence. (*People v. Harbert, supra*, 170 Cal.App.4th 42, 52-55.) Consciousness of guilt may establish knowledge as well as false statements or the driver’s actions following the accident. (*Id.* at p. 56; *People v. Bammes* (1968) 265 Cal.App.2d 626, 634.)

Henderson argues that when circumstantial evidence is subject to two reasonable interpretations, one pointing to guilt, the other to innocence, the defendant is entitled to the interpretation establishing innocence. He also argues that his actions hours after the accident may establish the destruction or concealment of evidence, after he realized his tow truck may have hit the victim. But this is not what the court found.

The court found that Henderson’s actions during and after the collision establish that he had constructive knowledge that he struck Jonathan H. The video-recording reflects that Henderson applied his brakes for three seconds following impact, signifying that he realized that he struck something. Brown opined that Henderson would have seen Jonathan H. two seconds before impact and that the collision would have resulted in an audible

sound. (*People v. Roche* (1942) 49 Cal.App.2d 459, 462 [noise of collision with bicyclist sufficient to attract driver's attention].) The video-recording captured the collision and was admitted into evidence at trial.

Henderson's actions the following day also establish his consciousness of guilt. He pressure-washed only the driver's side of his tow truck and removed the damaged front license plate. He admitted to washing the truck the morning of February 19, 2016, and he received a telephone call from his attorney's office mid-morning. Henderson also lied to police officers regarding a vehicle entering the intersection after him. The video-recording reflects another vehicle entered the intersection almost two minutes after the collision. That vehicle was a mile and one-half distant from Henderson's tow truck, and Brown opined it was unlikely Henderson would have seen it.

The cellular telephone records admitted into evidence at trial also reflect many telephone calls between Henderson and Rios, including near the time of the collision, five to six hours later, and throughout the following day.

Here the trial court rejected Henderson's denial of actual or constructive knowledge of the collision. "[T]he driver's simple denial of such knowledge has never been treated as compelling acquittal." (*People v. Harbert, supra*, 170 Cal.App.4th 42, 53 [collecting cases where claimed ignorance of an accident rejected in face of countervailing evidence].) Sufficient evidence supports Henderson's conviction of fleeing the scene of a fatal accident.

III.

In his opening brief, Henderson contends that the trial court failed to determine his ability to pay before imposing \$440 in a fine and assessments at sentencing. (*People v. Dueñas* (2019) 30 Cal.App.5th 1157.) He asserts that he has been denied due

process of law and is entitled to a hearing to determine his ability to pay. In his reply brief, Henderson states that, after further consideration, he withdraws this claim. Accordingly, we do not consider it.

The Attorney General requests that we direct the trial court to amend the abstract of judgment to reflect the imposition of assessments at sentencing. The trial court shall do so and forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

The judgment is otherwise affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Ryan J. Wright, Judge

Superior Court County of Ventura

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