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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ANTONIO G. IBARRA, Defendant and Appellant.	B272198 (Los Angeles County Super. Ct. No. BA441554)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. LaForteza, Judge. Affirmed.

Kevin Smith, 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, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following a head-on vehicle collision, defendant Antonio Ibarra was convicted of two counts of driving under the influence of alcohol. On appeal, he argues there was insufficient evidence that he was driving the vehicle at the time of the collision. We find that there was sufficient evidence and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural background

The Los Angeles County District Attorney charged defendant by information with one count of driving under the influence of alcohol within 10 years of three other DUI offenses (Veh. Code, §§ 23152, subd. (a), 23550.5[1]; count 1, a felony), and driving with a blood alcohol content of .08 percent or more within 10 years of three other DUI offenses (§§ 23152, subd. (b), 23550, count 2, a felony). The information further alleged that defendant suffered a prior felony conviction resulting in a prison sentence. (Pen. Code, § 667.5, subd. (b).)

A jury found defendant guilty on both counts. The prison prior allegation was dismissed. The court sentenced defendant to the upper term of three years in county jail on count 1, and a concurrent midterm of two years on count 2, which was stayed under Penal Code section 654. The court awarded 356 days of presentence custody credit and imposed various fines and assessments.

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[1] All further statutory references are to the Vehicle Code unless otherwise indicated.

B. Trial

1. *Prosecution evidence*

Diana T., age nine, testified that she was in a car accident with her mother the previous November. Diana was in the front passenger seat, and her mother was driving. Diana saw a car traveling toward them in the wrong lane. After the collision, Diana got out of the car and helped her mother get out. The other car involved in the incident was green, and Diana saw a man get out of the green car. The prosecutor asked, "And when you saw the guy get out of the green car, what door did he get out of?" Diana responded, "The driver's side." Inside the car, "[t]here was a lady and another girl in the back," who got out of the car after police arrived. As a result of the collision, Diana suffered a sprained arm and bruising to her knee, chest, and elbows. On cross-examination, Diana said the green car had four doors.

Diana's mother, Rosa Vargas, also testified. Vargas said she was driving on a two-lane portion of Riverside Drive when she saw another car coming toward her in her lane. The airbags went off when the cars collided, and Diana helped Vargas out of the car. Vargas identified defendant as the driver of the other car. The prosecutor asked, "[W]hat door of the other car did you see him get out of?" Vargas responded, "The driver's." While Vargas and defendant were talking, the woman in the front passenger seat of the green car yelled, "Let's go, let's go, the police are coming, and they're going to fuck you up."

Police arrived and spoke with all five people involved in the collision. Vargas told police that defendant was driving because she saw him get out of the driver's side of the car. Vargas sustained minor injuries to her leg and chest.

Los Angeles Police Department (LAPD) Officer Paul Yoon testified that he and his partner went to the scene of the incident. Yoon testified about a photograph of the cars following the collision, and said the placement of the cars indicated that the green Honda crossed the double yellow line into the other car's lane. Initially, a woman from the green car handed Yoon paperwork, and he assumed she had been driving. The people in both cars spoke Spanish, and Yoon did not. Eventually, defendant was detained because "we had probable cause he drove" and "he was swaying back and forth and he smelled of alcohol pretty bad." On cross-examination, defense counsel asked Yoon if he checked the location of the seat and mirrors in the car, or did any other investigation to determine who had been driving the green car. Yoon said no.

LAPD Officer Francisco Garcia testified that he arrived at the scene of the incident with his partner, Officer Locke. Garcia is a certified Spanish speaker with the LAPD. Garcia spoke with witnesses Dilsia Guardado and Glenda Aguilar, who were in the Honda at the time of the collision. Garcia said Guardado was displaying symptoms of intoxication because she smelled like alcohol and had an unsteady gait. Aguilar also smelled like alcohol and had a flushed face. Garcia then spoke with defendant, who had red, watery eyes, a flushed face, slurred speech, and the smell of alcohol on his breath. Garcia administered several field sobriety tests, and defendant's responses to those tests indicated that he was under the influence of alcohol. After defendant was transported to the station, Garcia administered a breathalyzer test twice. The breathalyzer indicated that defendant's blood alcohol content was .14 percent in both tests.

Defense counsel's motion under Penal Code section 1118.1 was denied as to both counts. Defendant stipulated to the prior convictions so the jury would not be informed of them.

2. *Defense evidence*

Defendant called Guardado, who testified that defendant and her cousin had been eating and drinking all afternoon, and she offered to drive defendant home because he seemed drunk. Guardado said that at the time of the collision she was driving the green Honda Civic, her cousin was sitting next to her in the passenger seat, and defendant was in the back seat. She testified that the other car turned on its high-beam headlights before the collision. After the collision, defendant got out of the car first. Guardado could not get out the driver's door because it was jammed, so she had to get out of the passenger side of the car. Guardado said the people in the other car "came out to tell me not to take the blame that I was the one driving the car; that it was him." She said she did not have a conversation with the people in the other car, "[t]hey just said that to me." Guardado said she told police that she was driving, but they did not believe her. On cross-examination, Guardado agreed that she told an investigator before trial that the other car was too far over on her side of the street.

Aguilar testified that she and defendant were eating and drinking at a barbecue in the afternoon before the incident. Aguilar testified that at the time of the collision, she was in the front passenger seat, defendant was in the back seat, and Guardado was driving. She said they told police that Guardado had been driving.

The jury found defendant guilty on both charges. Defendant timely appealed.

STANDARD OF REVIEW

Defendant argues that his conviction must be reversed because "there was insufficient evidence that he was actually driving the 2002 Honda Civic. Rather, the overwhelming evidence confirmed that the owner of the Honda, Delsia [*sic*] Guardado, was the person driving the car."

"To determine whether sufficient evidence supports a jury verdict, a reviewing court reviews the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable jury could find the defendant guilty beyond a reasonable doubt." (*People v. Rountree* (2013) 56 Cal.4th 823, 852-853.) "The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt." (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) "[I]f the circumstances reasonably justify the jury's findings, the reviewing court may not reverse the judgment merely because it believes that the circumstances might also support a contrary finding." (*People v. Gonzales* (2011) 52 Cal.4th 254, 295.)

With respect to witness credibility, "[w]e may not reweigh the evidence or substitute our judgment for that of the trier of fact." (*People v. Ewing* (2016) 244 Cal.App.4th 359, 371.) "At trial, 'it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends.' [Citation.]" (*People v. Hovarter* (2008) 44 Cal.4th 983, 996 [italics omitted].)

Reversal for insufficient evidence is unwarranted unless it appears that upon no hypothesis whatever is there sufficient substantial evidence to support the conviction. (*People v. Manriquez* (2005) 37 Cal.4th 547, 577.) A conviction should be

affirmed "[i]f the circumstances, plus all the logical inferences the jury might have drawn from them, reasonably justify the jury's findings." (*People v. Tripp* (2007) 151 Cal.App.4th 951, 955.)

DISCUSSION

Defendant contends there is no substantial evidence to support his convictions. He argues that Diana and Vargas testified that he got out of the car on the "driver's side," not from the driver's door. Coupled with Guardado's and Aguilar's testimony that Guardado was driving and defendant was in the back seat, defendant argues that the convictions must be reversed.

Defendant is correct that Diana said he got out of the driver's "side." When Vargas was asked which door defendant got out of, however, Vargas said, "the driver's." Vargas also said that one of defendant's companions was in the front passenger seat when she yelled for him to leave because the police are "going to fuck you up," suggesting that the woman was not the driver and she thought defendant would be in trouble if he were caught. In addition, Diana testified that there was "another girl in the back" of the Honda, which conflicted with defense testimony that the women were in the two front seats and defendant was in the back. Officer Garcia testified that he tested defendant for impairment, and there was no indication that anyone present at the scene attempted to interrupt this process with information that someone else had been driving the Honda. This conflicted with Guardado's and Aguilar's testimony that they attempted to tell police Guardado was driving.

At most, defendant has shown that there were conflicts in the evidence. Conflicts in evidence "do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or

jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends." (*People v. Maury* (2003) 30 Cal.4th 342, 403.) "[U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Here, it was not physically impossible or inherently improbable that defendant emerged from the Honda's driver's seat immediately following the collision, that either Guardado or Aguilar was in the back seat, and either Guardado or Aguilar yelled to defendant from the front passenger seat.

In order to adopt defendant's argument that there was no substantial evidence to support the verdict, we would have to discount Vargas's and Diana's testimony. The jury apparently found this testimony to be credible, because it rejected defendant's theory that he was not the driver and convicted him on both counts. "'To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions.' [Citation.]" (*People v. Ennis* (2010) 190 Cal.App.4th 721, 728.) That is not the case here.

Defendant argues that this case is similar to *People v. Kelley* (1937) 27 Cal.App.2d Supp. 771 (*Kelley*), *People v. Nelson* (1983) 140 Cal.App.3d Supp. 1 (*Nelson*), and *People v. Moreno* (1987) 188 Cal.App.3d 1179 (*Moreno*). Those cases are inapposite.

Kelley is a case from the Appellate Division of the Los Angeles Superior Court.[2] In that case, a Chevrolet hit two parked cars, and the Chevrolet got stuck to the second car. When witnesses arrived, defendant and a woman were at the scene. (*Kelley*, *supra,* 27 Cal.App.2d Supp. at p. 772.) The court held, "The conviction of defendant cannot be upheld on the theory that he was driving the Chevrolet at the time the accident occurred. He was not seen in the car until he entered it to move it, and the inferences point no more strongly to him as the one who had been driving it than to the young woman who appears to have been his companion." (*Id*. at pp. 772-773.)

In *Nelson*, which is also an appellate division case, a witness saw a car drive diagonally across a freeway, hit a guardrail, and roll; the two occupants were thrown from the car. (*Nelson*, *supra*, 140 Cal.App.3d Supp. at p. 3.) When officers arrived, the defendant said he had been driving the car. (*Ibid*.) At trial the defendant objected to the introduction of his statements to the officer, but his objection was overruled. (*Ibid*.) The defendant was convicted of driving under the influence, and challenged his conviction on the grounds that "the trial court erred in permitting testimony regarding his admission that he was the driver of the vehicle in question in the absence of a prima facie showing by the People of the corpus delicti independent of that admission." (*Nelson*, *supra*, 140 Cal.App.3d Supp. at p. 2.)

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[2] "Appellate division decisions have persuasive value, but they are of debatable strength as precedents and are not binding on higher reviewing courts." (*Velasquez v. Superior Court* (2014) 227 Cal.App.4th 1471, 1477.)

The Appellate Division explained, "In every criminal prosecution it is necessary to establish the 'corpus delicti,' that is, the body or the elements of the crime. (1 Witkin, Cal. Crimes, § 88, pp. 84-85; *People v. Lopez* (1967) 254 Cal.App.2d 185, 189 [62 Cal.Rptr. 47].) The corpus delicti consists of two elements: (1) the facts which form the basis of the loss, injury or harm and (2) the existence of a criminal agency as its cause. (Witkin, *supra*; *People v. Dorsey* (1974) 43 Cal.App.3d 953, 961 [118 Cal.Rptr. 362]; *People v. Lopez, supra*.) . . . . [W]here the offense is driving under the influence . . . the corpus delicti is established by a prima facie showing that: (1) an individual, (2) while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug; (3) drove a vehicle on a highway." (*Nelson, supra*, 140 Cal.App.3d Supp. at p. 3.) The court held that because the only evidence that the defendant was driving was the defendant's own statements, "it was error for the trial court to allow testimony regarding defendant's admission that he was the driver of the vehicle." (*Id.* at p. 4.)

Nelson has been criticized as "not consistent with current law regarding appellate review of corpus delicti findings" because it reached its conclusion "without apparently recognizing the difference between evidence sufficient to sustain a conviction and evidence sufficient to sustain a finding that the corpus delicti has been established." (*People v. Komatsu* (1989) 212 Cal.App.3d Supp. 1, 5.) Indeed, independent evidence of corpus delicti "is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1171.)

The Court of Appeal relied on *Nelson* in *Moreno*. There, a truck was involved in a single-car accident when it collided with a

telephone pole. (*Moreno*, *supra*, 188 Cal.App.3d at p. 1182.) The investigating police officer "talked to bystanders and ascertained that, other than two who identified themselves as passengers in the vehicle, no one had seen the accident." (*Ibid.*) The defendant initially admitted to police that he had been driving, but later recanted. (*Id*. at pp. 1182, 1184-1185.) At trial, defendant testified that he loaned his truck to two friends while he was in a bar drinking, and later discovered it had been damaged. (*Id*. at pp. 1184-1185.) He was convicted, and on appeal he argued that he had ineffective assistance of counsel. (*Id*. at 1185.)

On appeal the defendant argued that other than his statements to police, there was insufficient evidence of the corpus delicti of driving under the influence. (*Moreno, supra*, 188 Cal.App.3d at p. 1186.) The appellate court said the statements of the defendant and bystanders to the police officer were hearsay, but noted that trial counsel had not objected. (*Id*. at 1190-1191.) The court said, "Since defendant has based his appeal [on] ineffective assistance of trial counsel . . . we must determine if effective trial counsel would have been successful in excluding this evidence and, if so, whether it is reasonably probable a result more favorable to defendant would have been reached absent counsel's failings." (*Id*. at 1189.) The court held that "the prosecution failed to establish by exclusion of other possible drivers that defendant had, in fact, been driving the pickup at the time of the accident while under the influence of alcohol. Having failed to establish the corpus delicti, defendant's extrajudicial confession . . . should not have been admitted." (*Id*. at p. 1191.) The court reversed the conviction. (*Id*. at p. 1192.)

Kelley, Nelson, and *Moreno* are not similar to this case. In each of those cases, there was no independent evidence presented

at trial about who was driving the cars at the time of the accidents. Here, on the other hand, Vargas testified that defendant got out of the driver's door immediately after the collision. Diana testified that defendant got out of the "driver's side," and one of his companions was in the back seat. Vargas stated that one of defendant's companions was in the front passenger seat when she yelled about the police coming. This independent evidence sets this case apart from cases in which there were no witnesses to an accident, or no evidence presented at trial other than defendant's own statements about who was driving. Here, the verdict is supported by substantial evidence.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.