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

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY M. BROWN,

Defendant and Appellant.

B259219

(Los Angeles County Super. Ct.
No. BA420273)

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

Susan Morrow Maxwell, 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, Jaime L. Fuster, Deputy Attorney General, and Joseph P. Lee, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Anthony M. Brown appeals a judgment after the jury found him guilty of vehicular manslaughter with gross negligence (Pen. Code, §192, subd. (c)(1) [count 1]), leaving the scene of an accident (Veh. Code, § 20001, subd. (a) [count 2]), and driving when the privilege was suspended (Veh. Code, § 14601.2, subd. (a) [count 3]).¹ As to count 1, the jury found true the allegation that defendant fled the scene of the crime. (Veh. Code, § 20001, subd. (c).) The trial court sentenced defendant to nine years in state prison, consisting of the middle term of four years in count 1, plus a five-year enhancement under Vehicle Code section 20001, subdivision (c). The court imposed and stayed the middle term of three years in count 2 pursuant to Penal Code section 654, and imposed a one-year term as to count 3 to run concurrently with count 1.

On appeal, defendant contends the trial court erred in admitting five autopsy photographs of the victim over defense counsel's objection under Evidence Code section 352. We reject defendant's contention and hold the probative value of the photographs substantially outweighed any prejudicial effect. The judgment is affirmed.

STATEMENT OF FACTS

Prosecution Evidence

On July 20, 2013, around 6:30 p.m., Markeis Parish, Shawn Sherman, and Garvey Sims were crossing Crenshaw Boulevard at the intersection of 78th Place. Rosa Garcia was driving southbound on Crenshaw at the time, and Diamond Manuel was driving northbound. When Parish stepped into the street, all of the traffic was stopped at a red light at 76th Place and Crenshaw.

¹ Defendant was charged in count 3 with an additional allegation of driving under the influence as the reason for the suspension. Defendant waived a jury for purposes of that finding, which the trial court later found to be true.

Garcia stopped in the far right hand lane before the intersection at Crenshaw and 78th, to allow Parish, Sherman, and Sims to cross the street. Manuel also stopped to let them cross the street. As the men were crossing, Garcia noticed a gray car coming “very quickly” behind her and then change lanes to get around her car. She estimated the car was going around 70 or 75 miles per hour. Manuel saw a silver Mercedes “swerving up the street going the opposite way really, really fast, about 90 to 100 miles per hour.”

Sherman, who was behind Parish, saw a silver Mercedes approaching quickly towards them on Crenshaw and yelled to Parish, “Watch out, Markeis.” The Mercedes then hit Parish and the driver continued down Crenshaw without stopping. Sherman estimated that the Mercedes was going a hundred miles per hour “at least,” and testified that Parish “flew real high in the air, like as high as the light post.” Sherman told a police officer, “When we crossed the street we saw a benz swooped to the outside lane (#1),” Sims testified that the collision “catapulted [Parish] through the sky.” Sims told the same police officer, “I can absolutely identify the car. I didn’t get a very good look at him, but he looked like a male, light complexion, 30s-40s, black male.”

Pedro Topete was driving northbound on Crenshaw when he “saw what looked like a brown sack of potatoes just shoot straight up maybe 20, 25 feet up,” and saw a silver car coming towards him about 40 to 45 miles per hour with the windshield shattered. He realized that what he thought was a sack of potatoes was actually a person being hit by a car. Topete tried to follow the car but could not catch up because it was not stopping at stop signs.

Los Angeles County firefighter and paramedic Jerad Bailey received a call to respond to the intersection of 78th and Crenshaw. By the time he arrived at the scene, a private ambulance was already attending to Parish. Parish was lying face down with multiple injuries on the southbound side of Crenshaw. After turning him over, Bailey observed “multiple avulsions and fractures. He had blood coming from his legs. He had an open jaw wound and also a head wound too.” Parish also had “abrasions all over his

stomach” and “lost some major skin or superficial skin to his chest and abdomen.” Parish was taken to the hospital and pronounced dead.

Michael Walker, Parish’s father, was at his house with his brother-in-law, which was about two and a half blocks away from the intersection of 78th and Crenshaw. Walker agreed to drive his brother-in-law home. As he began driving eastbound on 78th toward Van Ness, Walker noticed a gray Mercedes backing out of a driveway “pretty fast,” almost hitting the front of his car. After Walker honked his horn, defendant turned his head in Walker’s direction. Walker noticed the windshield “was really badly damaged” before defendant sped off. After he drove his brother-in-law home, Walker found out that Parish was hit by a car at 78th and Crenshaw.

That same evening, Phillip Jones was driving near Imperial Highway and Spinning Avenue when he noticed a silver Mercedes, which appeared to have been wrecked. Jones saw defendant get out of the car, look at it while walking with an unstable gait. As Jones continued watching, defendant ran across the street and out of sight. After driving around the corner, failing to locate defendant, and checking the Mercedes to see if someone was injured, Jones called the police.

Investigation

Los Angeles County Coroner James Ribe performed an autopsy on Parish and prepared a diagram during the autopsy outlining his injuries. The diagram was later admitted into evidence at trial. Ribe “observed a large abrasion about one and a half inches on the right upper forehead convexity,” and “a set of abrasions and a laceration on the left jaw bone area with a possible fracture to the jaw bone.” He also observed “a large abrasion on the right side of the neck,” “an abrasion on the point of the right shoulder,” and “extensive brush burns on the anterior surface of the chest and abdomen.” The abbreviation “CT” on the diagram was used to indicate “chest tube,” where large plastic tubes were placed in Parish’s chest in the emergency room to drain blood and

“permit expansion of the lungs.” There were abrasions on the left side of Parish’s pelvis and Ribe “found evidence of a displaced pelvic fracture, . . . a large abrasion on the left lateral thigh, abrasions on the left lateral knee, abrasions on the front of the right knee area and two fractures of the legs, one right and one left.” Ribe described Parish’s pelvic fracture, noting that “part of the bone was displaced and sticking out under the skin.” Ribe indicated that Parish sustained a 17-inch fracture to the lower part of his right leg bone as well as a 9 and a half inch fracture of his left leg, and an open fracture to his upper left arm “where the bone was sticking out.” Ribe further stated that Parish suffered a hemothorax, which is a bleeding into the chest cavity caused by internal injuries.

Los Angeles Police Officer Maurice Hallauer investigated the collision that occurred at 78th and Crenshaw. He calculated that the speed of Parish’s body was 43 miles per hour at the time of impact and the minimum speed defendant’s car was traveling after Parish lost contact with the car was 43 miles per hour. Officer Hallauer estimated that prior to impact, defendant was traveling at least 86 miles per hour and at most 129 miles per hour. Los Angeles Police Officer Hayssen Aguirre, a collision investigator, responded to 78th and Crenshaw to recover evidence, including bloodstains, and was present when another officer took measurements of the locations of recovered items.

Los Angeles Police Officer Ruben Mendoza investigated the collision and sought to locate the driver of the Mercedes. Officer Mendoza went to Imperial and Spinning, which was about two and a half to three miles away from 78th and Crenshaw, in order to inspect the Mercedes that had been abandoned at that location. He noticed a red stain on the armrest of the driver’s door and also located a car registration inside the vehicle, which belonged to defendant’s girlfriend, Rashida Williams.

The next day, Officer Mendoza spoke with Walker who took him to 2916 West 78th Place, the address where Walker believed the Mercedes had backed out of the driveway almost hitting him. Officer Mendoza spoke with Geneva Reed, who was working at 2916 West 78th Place. At around 10:00 p.m. on July 20, 2013, Reed heard

Katherine Robbins crying hysterically at her house located at 2610 78th Place. Robbins was defendant's mother. Reed had previously seen a "young gentleman" driving a silver Mercedes parked at that house, who she referred to as "Anthony Brown." On December 27, 2013, Officer Mendoza interviewed Williams and she told him that she did not know any other person who drove her Mercedes other than defendant. It was stipulated that defendant's driver's license was suspended at the time of the collision.

On July 25, 2013, Los Angeles Police Department Criminalist Mandel Medina compared the Mercedes with pieces of the car that were recovered from the scene of the collision, and concluded that several pieces had come from the Mercedes. Medina also recovered trace evidence or red stains from the windshield, trunk lid, steering wheel, and driver's door armrest. DNA evidence obtained from the windshield, trunk lid, and steering wheel matched the DNA profile of Parish. The DNA profile obtained from the driver's door armrest matched defendant.

Defense Evidence

Defendant offered a photograph in his defense and rested without testifying.

DISCUSSION

Defendant contends that the trial court prejudicially erred in admitting five autopsy photographs over defense counsel's objections under Evidence Code section 352. Defendant argues the photographs had limited if any probative value regarding the issue of gross negligence, and their probative value was substantially outweighed by the danger these photographs would evoke an emotional bias against him. We conclude the court acted within its discretion in admitting the five autopsy photographs.

Relevant Facts

Prior to trial, defense counsel indicated that the prosecution presented her with numerous photographs taken by the coroner during Parish's autopsy, and that she had objections to them. The prosecutor responded that there were about 30 photographs but he did not intend to introduce them all. He contended "the reason I think that they are relevant is because the heart of this case is, you know, was this gross negligence, not did the decedent die. I'm not showing them to show he died but to show his injuries. His specific injuries as shown in the photos show how egregious, in the People's view, the defendant's conduct was."

After the trial court asked whether the coroner would be testifying about the injuries as well, the prosecutor stated it is important to not just describe Parish's injuries "but actually seeing them. Seeing them is the best evidence that shows what happened to him." The prosecutor further stated that he submitted 14 of the coroner's photographs after taking out 15 that he would not use, but he probably would not even show all 14. He argued, "The ones showing the injuries to his abdomen I think are very relevant. I think the ones showing injuries to his head as well as his shoulder are relevant because the testimony will be that it's his shoulder that did, in fact, penetrate the windshield of the car. That to me is a very important piece of evidence in that if we're talking about ordinary negligence . . . that wouldn't be something that would have occurred."

Defense counsel objected to photograph No. 116 because "it's pretty graphic." The court responded that the prosecution is "arguing speeding was involved, then [the photograph] could be relevant to that issue." Defense counsel stated, "You can hit somebody at a lower speed, and they would still die and wouldn't necessarily have this much injury. You could hit someone at a higher speed, and they may still die and not have this much injury. I don't think the totality of the injury is what determines the gross negligence. What determines the gross negligence is what would arguably be the rate of speed. So the injury is really a separate issue . . . Ultimately, I think these photos,

especially a number of them, are inflammatory to the point where I think it would affect the jurors' ability to focus on the issue." The court responded that it understood and would likely limit the number of photographs, but would need to see them and have "further inquiry regarding this."

The court later examined and discussed autopsy photograph Nos. 116 through 128 with defense counsel and the prosecutor. During this process, the prosecutor agreed to remove photograph Nos. 117, 118, 119, 121, 124, 126, 127, and 128. The prosecutor described photograph No. 116 as showing all of Parish's injuries except for injuries to his legs, and photograph No. 120 as showing the wounds on the top of his head, "which shows the force with which he either hit the car or hit the ground." He stated that photograph No. 122 shows the actual "markings or skin removal," and photograph 123 shows the injuries to Parish's legs. Finally, photograph No. 125, depicting Parish's left shin, shows the abrasion "to his legs which caused the severe skin injury." The trial court found admissible five autopsy photographs—Nos. 116, 120, 122, 123, and 125. The court reasoned, "Whenever I have cases like these, it's very sad to see the victim in that state, and it does give prejudice. On the other hand, they do appear to be relevant."

During trial, defense counsel objected to photograph Nos. 116 and 120 during Bailey's testimony, and later to the other autopsy photographs being admitted into evidence. The court overruled defense counsel's objections.

Analysis

"The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) "[T]he decision to admit victim photographs is a discretionary matter we will not disturb on appeal unless the prejudicial effect of the photographs clearly

outweighs their probative value.’ (*People v. Taylor* (2001) 26 Cal.4th 1155, 1168.)” (*People v. Davis* (2009) 46 Cal.4th 539, 615.)

Defendant contends the autopsy photographs were wholly unnecessary for the jury to make a finding as to whether defendant acted with gross negligence. This contention lacks merit. “[A]utopsy and crime scene photographs are not made inadmissible because they are offered to prove an issue not in dispute.” (*People v. Watson* (2008) 43 Cal.4th 652, 684; *People v. Crittenden* (1994) 9 Cal.4th 83, 132-133.). As our Supreme Court has explained: “Although defendant contends the photographs were inadmissible because they had no bearing on the only disputed question at trial (his mental state), we have made clear that the absence of a defense challenge to particular aspects of the prosecution’s case or its witnesses does not render victim photographs irrelevant.” (*People v. Lewis* (2001) 25 Cal.4th 610, 641.) The autopsy photographs demonstrate Parish’s serious and fatal injuries caused by defendant’s actions, and corroborate Ribe’s and Bailey’s testimony.

We also reject defendant’s argument that the admission of Ribe’s diagram depicting Parish’s injuries was sufficient to supplement the oral testimony, therefore making the admission of the autopsy photographs cumulative. It is true that the prosecution could have relied upon the diagram to establish Parish’s injuries, however, “it is immaterial for purposes of determining the relevance of evidence that other evidence may establish the same point.” (*People v. Scheid* (1997) 16 Cal.4th 1, 16; see also *People v. Anderson* (2001) 25 Cal.4th 543, 592 [“[P]hotos are not cumulative simply because they illustrate evidence presented by other mean”]; *In re Romeo C.* (1995) 33 Cal.App.4th 1838, 1843 [“Evidence may be relevant even though it is cumulative; thus, the only ban on cumulative evidence is found in Evidence Code section 352”].) Even if the autopsy photographs were cumulative to the testimonial evidence, ““this does not demonstrate the trial court abused its broad discretion. “[P]rosecutors . . . are not obliged to prove their case with evidence solely from live witnesses; the jury is entitled to see details of the victims’ bodies to determine if the evidence supports the prosecution’s

theory of the case.””” (*People v. Garcia* (2008) 168 Cal.App.4th 261, 294; accord, *People v. Lewis* (2009) 46 Cal.4th 1255, 1282.) As stated previously, the autopsy photographs corroborated both Bailey’s and Ribe’s testimony describing Parish’s extensive injuries from the collision. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1248 [photographs are relevant to illustrate a forensic expert’s testimony]; *People v. Howard* (2010) 51 Cal.4th 15, 33 [autopsy photographs are admissible to clarify the testimony of prosecution witnesses regarding the crime scene and the autopsy].)

Defendant cites *People v. Gibson* (1976) 56 Cal.App.3d 119, 135, in arguing that the autopsy photographs are “gruesome, revolting, and shocking to ordinary sensibilities.” Defendant contends the photographs were highly inflammatory as they depict Parish’s naked bloody body with the intubation tube and other medical devices attached to his body, which were used by medical personnel during their efforts to revive him. While we agree the photographs are undoubtedly unpleasant, we hold the photographs cannot be fairly characterized as sensational or unduly gruesome. (See *People v. Davis, supra*, 46 Cal.4th at pp. 558, 615 [photograph of victim’s badly decomposed body not gruesome].) Through prosecutorial discretion, and careful control of the record by the trial court, the 30 autopsy photographs resulted in admission of only 5 into evidence. The record, as a whole, demonstrates no violation of the principles of Evidence Code section 352.

Assuming the court abused its discretion in admitting the five autopsy photographs, the photographs ““did not disclose to the jury any information that was not presented in detail through the testimony of witnesses,’ and they were ‘no more inflammatory than the graphic testimony provided by a number of the prosecution’s witnesses.’ (*People v. Heard* [(2003) 31 Cal.4th. 946,] 978.)” (*People v. Cole* (2004) 33 Cal.4th 1158, 1199.) Thus, admission of the photographs was harmless under both *Chapman v. California* (1967) 386 U.S. 18, 22-24 and *People v. Watson* (1956) 46 Cal.2d 818, 837. (*People v. Cole, supra*, at p. 1199.)

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.