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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

NOELLE MARIE WARREN,

Defendant and Appellant.

C069926

(Super. Ct. No. CR082836)

Defendant Noelle Marie Warren appeals her conviction for hit and run with permanent serious injury (Veh. Code, ¹ § 20001, subds. (a), (b)(2)). She first contends there was insufficient evidence to prove that she was the actual driver of the involved vehicle. She next contends the abstract of judgment does not accurately reflect the trial court's sentence. We disagree with the first contention and agree with the second, which the People properly concede. Accordingly, we shall affirm but order the abstract of judgment corrected.

¹ Further undesignated statutory references are to the Vehicle Code.

FACTUAL AND PROCEDURAL BACKGROUND

The Collision

On August 27, 2007, Jonathan Pinkerton, Kyle Daubert and Daniel Mastrup were riding motorcycles on Russell Boulevard. Daubert and Pinkerton were riding side by side with Mastrup in front. Around 8:30 or 8:45 p.m., a vehicle struck Pinkerton from behind and also knocked Daubert off of his motorcycle. Mastrup heard the sound of a collision behind him. He turned and saw an SUV approaching him. As it passed, he saw a motorcycle underneath it. It was a dark red maroon, large SUV--a Suburban, Yukon or Tahoe--manufactured between 1999 and 2004. He believed it had a damaged rear axle, sway bar and shock mount. It was traveling in excess of 55 miles per hour and swerving erratically.

Mastrup turned around to look for his friends. He saw Daubert running down the road and joined him to find Pinkerton in a ditch, with Daubert's motorcycle on top of him. Pinkerton had suffered a collapsed lung and needed his spleen removed. Daubert sustained sprains, scars and bruises. He did not see the driver of the SUV that hit him.

Description of Driver

Mastrup thought he saw four people in the SUV. At trial, he described the driver as an average-sized female with dark brownish blonde hair, which was either short or pinned like a pony tail. She looked young, like a "cute high school girl" and had "soft" features.

Initially, Mastrup told police there were four people in the car with short hair. He might also have described the driver as a Hispanic male. Mastrup later disclaimed knowing whether the driver was male or female and expressed uncertainty about what the driver looked like. Mastrup first described the driver as female nine months after the accident and after the identification of a suspect in the case. He also indicated the driver was "majority Caucasian" or could have been a fair-skinned Hispanic. At trial, Mastrup

acknowledged he might have previously described the driver as Hispanic, but claimed this was an error caused by confusion at the scene and the fact he was shaken up.

Defense expert Robert Shomer testified about the decreased ability of witnesses to make accurate identifications when in a life-threatening situation and that accuracy does not improve over time.

Additional Evidence

Pinkerton's motorcycle was found approximately a mile or two west of the scene of the accident. There was a fluid trail on the road near the motorcycle, leading away from the motorcycle toward defendant's home. The trail of fluid ended at the turn from the road to defendant's home.

About a week after the accident, Lorin Warren (Warren), defendant's father, asked Guillermo Castro to fix his maroon 2003 Chevy Tahoe. The Tahoe had a smashed hood, the grill and radiator were damaged, there were scratches on the undercarriage, damage to the bumper and fog lights, and the Tahoe had neither air conditioning fluid nor radiator fluid. Warren told Castro that the Tahoe had hit a tree. He paid cash for the repairs and told Castro they needed to be done right away.

While fixing the vehicle, Castro did not find any evidence the vehicle had hit a tree. Rather, there were fragments in the engine area that were from a motorcycle tire. There was blue paint, obvious rubber marks and metal shavings under the Tahoe. These findings were consistent with the Tahoe's hitting Pinkerton and Daubert. The blue paint was similar to that on the license plate of one of their motorcycles. A portion of the grill that had been knocked out lined up perfectly with the rear taillight and bumper of Pinkerton's motorcycle. Warren was the registered owner of the Tahoe, and had not reported the accident to either police or his insurance company.

The local newspaper published a description of the vehicle involved in the accident, which led to information the vehicle might be located at Castro's residence. Law enforcement found the vehicle at Castro's residence, where they determined recent

repairs had been made to the front bumper grill and hood and there was damage to the undercarriage.

Defendant was the only person who regularly drove the Tahoe, and she referred to it as hers. The Tahoe contained receipts demonstrating that defendant had paid for maintenance and repairs of the Tahoe in the past. There was also evidence in the Tahoe indicating defendant had taken the car with her to a modeling job and to college in Santa Barbara. Approximately one year before this accident, defendant hit someone with the front of the Tahoe while driving. She also frequently drove on Russell Boulevard and specifically near the location of the accident.

The Charges

The People charged defendant with hit and run causing permanent serious injury (§ 20001, subs. (a), (b)(2)) and alleged personal infliction of great bodily injury. (Pen. Code, §§ 667, 1192.7.) A jury found defendant guilty of the substantive offense; the trial court later dismissed the allegation. The trial court sentenced defendant to three years in state prison.

DISCUSSION

I

Evidence of Driving

Defendant contends there was insufficient evidence she was actually driving the Tahoe *at the time of the accident*. She does not challenge that the Tahoe was the involved vehicle, only her status as driver.

A. Standard of Review

“In reviewing a claim of insufficient evidence, we review the record in its entirety, considering the evidence most favorably to the prevailing party, and determine whether any rational trier of fact could have found the prosecution proved its case beyond a

reasonable doubt.” (*People v. Zavala* (2005) 130 Cal.App.4th 758, 766.) In making this assessment, we draw all reasonable inferences from the record in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206 (*Ochoa*)). We do not weigh the evidence or decide the credibility of the witnesses. (*Ochoa, supra*, 6 Cal.4th at p. 1206.) Substantial evidence includes circumstantial evidence and the reasonable inferences this evidence allows. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

B. Analysis

Defendant’s contention rests primarily on her challenge to the credibility of Mastrup’s identification of her as the driver. At trial, Mastrup identified the driver of the vehicle as a young female, with a small build and dark brownish blond hair, a description which matched defendant’s appearance.

Although we agree that the record reflects discrepancies between Mastrup’s trial testimony and his earlier statements regarding the appearance of the Tahoe’s occupants, these discrepancies were discussed with Mastrup and others in front of the jury at trial. The jury chose to credit Mastrup’s trial testimony. It is the trier of fact’s task to the weigh credibility of witnesses and resolve conflicts in testimony. Unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “The determination of inherent improbability must be made without resort to inference or deduction, and thus cannot be established by comparing the challenged testimony to other evidence in the case.” (*People v. Ennis* (2010) 190 Cal.App.4th 721, 725 [where inherent improbability claim is merely an attack on witness credibility, it cannot be the basis for reversal on appeal].)

Here, Mastrup’s testimony identifying defendant as the driver at the time of the collision is neither physically impossible nor inherently improbable. His testimony was

corroborated by a substantial amount of circumstantial evidence indicating defendant considered the Tahoe to be hers, paid for its maintenance and repairs, regularly drove it even while away at college in another area of the state, and frequently drove it in the exact same area and direction as the driver who caused the collision with the victim motorcycle riders. Her home was near the scene of the collision and one of the involved motorcycles had been abandoned near her home; a trail of vehicle fluid led from that scene to the turn off to her home. Further, defendant had previously hit someone else while driving the Tahoe. Sufficient evidence supported defendant's conviction as the Tahoe's driver at the time of the hit and run.²

II

Correction of Abstract

Defendant also contends the abstract of judgment does not accurately reflect the trial court's sentence and requests correction; the People concede error and join defendant's request. We agree with the parties that although the trial court sentenced defendant to three years in state prison, the abstract reflects a sentence of three years and eight months. Accordingly, we shall direct the trial court to correct the abstract of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare a corrected

² We expressly decline to consider the People's assertion in their briefing that had another family member been driving the Tahoe at the time of the accident, the defense would have called the guilty party to testify as the statute of limitations had expired. The burden of proof as to defendant's identity as the driver remained at all times with the People in this case.

abstract of judgment consistent with this opinion and to provide a certified copy thereof to the Department of Corrections and Rehabilitation.

_____DUARTE_____, J.

We concur:

_____BUTZ_____, Acting P. J.

_____MURRAY_____, J.