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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN CHRISTOPHER BARTELSON,

Defendant and Appellant.

D067471

(Super. Ct. No. SCE338458)

APPEAL from a judgment of the Superior Court of San Diego County, Herbert J. Exarhos, Judge. Affirmed.

Dacia A. Burz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Paige B. Hazard, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Sean Christopher Bartelson led police on a 110 mile per

hour, four- to six-mile chase, which ended when he left a freeway and his truck collided with two cars stopped at a surface street intersection. The drivers of the two cars were injured, and Bartelson and his passenger were apprehended at gunpoint. Bartelson was convicted of evading a police officer and injuring the two victims; an allegation that he personally inflicted great bodily injury on one of the victims was found true. On appeal, Bartelson contends the trial court erred in excluding expert testimony to the effect the brakes on his truck may have failed. Bartelson also contends the charges against him should have been dismissed because, following the collision, the arresting officers did not preserve his damaged truck; although the truck was destroyed in the collision, he argues that, had it been preserved, it might have shown his brakes did in fact fail.

We reject both contentions. Even if, as Bartelson contends on appeal, some mechanical failure contributed to the collision that ended the chase, evidence of that failure would not relieve Bartelson of responsibility for inflicting the foreseeable injuries caused by his reckless and unlawful flight. Thus, the trial court could exclude the mechanic's proffered testimony as irrelevant and properly find that the truck was not likely to produce any exculpatory evidence.

FACTUAL AND PROCEDURAL BACKGROUND

At 8:00 a.m. on December 22, 2013, a La Mesa police officer on patrol in a marked police vehicle near a motel noticed that Bartelson, who was driving a Toyota truck, did not have his seatbelt fastened. The police officer attempted to stop Bartelson by turning on his red lights; Bartelson noticed the lights and, instead of stopping as required by law, drove onto Interstate 8. The officer followed Bartelson, who drove at

speeds approaching 110 miles per hour; a California Highway Patrol officer joined the chase. Bartelson weaved in and out of traffic on the freeway and transitioned to another freeway; he then went down an off-ramp, which ended at a T-intersection. In going down the off-ramp, Bartelson's speed diminished, but he nonetheless collided with two cars stopped in the intersection. Although Bartelson and his passenger attempted to flee on foot, they were promptly apprehended at gunpoint.

The 75-year-old driver of one of the cars Bartelson hit, Frederick Dunker, was trapped in his car, and, in order to extract him, emergency responders removed a car door. Dunker was transported to a hospital where he was treated for two broken vertebrae in his back and a one-and-a-half-inch diameter hole in his shin. Dunker spent about five to six months in a body cast, and his shin wound was treated twice a week for approximately nine months at a wound clinic. At the time of trial, Dunker could not walk without a cane and could no longer do many things he enjoyed, such as riding a bicycle.

Lloyd Mathis was the driver of the second car Bartelson hit. He was able to get out of his car and did not require any immediate attention, although the airbags in his car did deploy. A few days later, he had a tingling sensation in his fingers and neck and numbness in his legs; he was diagnosed with torn discs in his neck and treated with oral steroids as well as steroids injected in his neck, back and hip.

At trial, Bartelson testified he fled police because he thought that if he stopped, his truck would be impounded and he could not afford the impound fees; he testified that he hoped he could reach his mother's house and that police would permit him to leave the truck there, although he expected to be arrested. When he saw a second marked car

pursuing him, he tried to get off the freeway and pull over at a Department of Motor Vehicles parking lot. Bartelson testified that, as he was leaving the off-ramp, he pushed the brake pedal down as far as it would go, but the truck did not slow down enough and he hit the two cars. By the time of the collisions, Bartelson had slowed down to at least 50 miles an hour or, according to his expert, between 30 and 35 miles an hour.

Bartelson was charged with multiple offenses and enhancements, and the jury found Bartelson guilty of one count of evading an officer and causing serious bodily injury (Veh. Code, § 2800.3, subd. (a)) and one count of felony hit and run (Veh. Code, § 20001, subd. (a)). The jury found true an enhancement for inflicting serious bodily injury on one of the victims (Pen. Code, § 1192.7, subd. (c)(8)). Bartelson admitted enhancements for committing the crimes while on bail (Pen. Code, § 12022.1, subd. (b)) and while on parole (Pen. Code, § 1203.085, subds. (a) & (b)), a prior prison term (Pen. Code, §§ 667.5, subd. (b) & 668), serious prior felonies (Pen. Code, §§ 667, subd. (a)(1), 668 & 1192.7, subd. (c)), and two strike priors (Pen. Code, §§ 667, subds. (b)-(i), 1170.12 & 668). The trial court sentenced Bartelson to an aggregate term of 35 years to life.

Bartelson filed a timely notice of appeal.

DISCUSSION

I

A. Exclusion of Braking Expert

Prior to trial, the prosecution moved to exclude, as irrelevant, expert testimony Bartelson proposed to present from an automobile mechanic. In a declaration, the

mechanic stated he believed Bartelson's brakes may have been "fading" at the time of the collision with Dunker's and Mathis's cars. In particular, the mechanic stated: "Brake fading can occur because of excessive braking, which can cause the brake pads to heat up. The brake[] pads will then begin to gas, and the result is that the pads will no longer have metal-to-metal contact. Without metal-to[-]metal contact, the vehicle will not stop even though the brake pedal and system is engaged. If the brake fluid contains excessive moisture, then the fluid may begin to boil which also reduces the effectiveness of the braking system." With respect to Bartelson's speed and braking, the expert stated: "A car that, at one time, was traveling at 110 mph, but that reduces its speed down to 40 mph, may certainly experience brake fading and a gassing situation."

The trial court agreed with the prosecution and excluded the mechanic's brake testimony. On appeal, Bartelson argues the trial court abused its discretion in doing so.

B. Legal Principles

Under Vehicle Code section 2800.3, subdivision (a), the driver of a vehicle being pursued by a law enforcement officer is guilty of a felony whenever the flight "*proximately causes* serious bodily injury to any person." (Italics added.) Penal Code section 12022.7, subdivision (a) provides a three-year prison enhancement whenever, in the course of committing a felony, a person inflicts "great bodily injury on any person other than an accomplice." Thus, as the parties agree, the admissibility of the excluded brake testimony depends on whether it was relevant in determining the cause of the injuries suffered by Dunker and Mathis.

As the court in *People v. Brady* (2005) 129 Cal.App.4th 1314, 1324-1325 (*Brady*)

recognized, " '[t]he principles of causation apply to crimes as well as torts.' " Both in civil tort law and criminal law, an actor is not responsible when a superseding event or circumstance causes injury. " '[T]he defense of "superseding cause[]" . . . absolves [the original] tortfeasor, even though his conduct was a substantial contributing factor, when an independent event [subsequently] intervenes in the chain of causation, producing harm of a kind and degree *so far beyond the risk the original tortfeasor should have foreseen* that the law deems it unfair to hold him responsible.' [Citation.] In criminal cases, intervening causes are typically described as either dependent or independent." (*Chanda v. Federal Home Loans Corp.* (2013) 215 Cal.App.4th 746, 755.)

"A dependent intervening cause will not absolve a defendant of criminal liability while an independent intervening cause breaks the chain of causation and does absolve the defendant. [Citation.] 'An intervening cause may be a normal or involuntary result of the defendant's original act. Such a cause is said to be "dependent," and does not supersede; i.e., the defendant is liable just as in the direct causation case.' [Citation.] An 'independent' intervening 'act may be so disconnected and unforeseeable as to be a superseding cause; i.e., in such a case the defendant's act will be a remote, and not the proximate, cause.' [Citation.] In the words of the Restatement Second of Torts, again in the context of negligence, '[w]here the negligent conduct of the actor creates or increases the foreseeable risk of harm through the intervention of another force, and is a substantial factor in causing the harm, such intervention is not a superseding cause.' [Citation.] Stated another way, '[t]he intervention of a force which is a normal consequence of a situation created by the actor's negligent conduct is not a superseding cause of harm

which such conduct has been a substantial factor in bringing about.' [Citation.]" (*People v. Schmies* (1996) 44 Cal.App.4th 38, 49 (*Schmies*).

In a series of cases applying these principles in factual circumstances indistinguishable from those presented here—e.g., a defendant charged with injuring or killing others as a result of high speed vehicular flight from law enforcement—courts have uniformly rejected contentions that the negligence of law enforcement personnel will absolve fleeing defendants of criminal culpability. Importantly, evidence of dependent or foreseeable causes, which, even if proven, would not exonerate a defendant, may be excluded by the trial court. In *Schmies*, as here, the defendant fled from an attempted traffic stop; in the following high speed chase, a highway patrol vehicle hit a third car, and the driver of that car was killed and a highway patrol officer was injured. The defendant was charged with vehicular manslaughter, and the trial court excluded expert evidence with respect to whether the highway patrol officer acted reasonably. In affirming the defendant's conviction, the court found that because the collision, death and injuries were foreseeable consequences of the unlawful flight, evidence with respect to the reasonableness of the officer's conduct, even if it showed the officer acted unreasonably, would not have exonerated the defendant and, thus, was properly excluded. (*Schmies, supra*, 44 Cal.App.4th at pp. 53-56.)

In *People v. Harris* (1975) 52 Cal.App.3d 419, 427 (*Harris*), the trial court dismissed a manslaughter information following a preliminary hearing, agreeing with the defendant that the victim was killed as a result of a law enforcement officer's collision with the victim's car at a time it was not clear the officer was still pursuing the defendant.

In reversing, the Court of Appeal found that whether the officer was still pursuing the defendant was a question for a jury, but that the evidence presented at the preliminary hearing was sufficient to support a conviction: "The evidence adduced at the preliminary hearing indicates that defendant initiated an unlawful and reckless course of speed on public streets and then continued it for 4.4 miles in an effort to evade law enforcement officers who, using emergency sirens and red lights, tried to apprehend him. Toward the end of the high speed chase a third law enforcement unit was involved in apprehending defendant. His speed at times exceeded 100 miles per hour. It was reasonably foreseeable that the officers would continue to chase him as he speeded recklessly and circuitously over public thoroughfares and failed to stop at boulevard stops, thus setting in motion circumstances creating peril to others on the public streets and a high probability that collisions, injuries and deaths would occur in the course of the chase." (*Ibid.*)

In *People v. Pike* (1988) 197 Cal.App.3d 732, 749-750 (*Pike*), a law enforcement officer was killed in a collision with another law enforcement officer, while both were pursuing the defendant in a high speed chase. Again, the court rejected the fleeing defendant's contention that he was not responsible for the officer's death. The court found that the probability the defendant's flight "might result in one or both of the officers losing control and/or colliding with another vehicle or some object is sufficient to establish that defendant's conduct was a cause that, in natural and continuous sequence, produced [the victim's] death and without which that death would not have occurred." (*Id.* at p. 750.)

In a somewhat different factual context, the court in *Brady* reached a similar conclusion: evidence of negligence by public safety officers in responding to a defendant's unlawful conduct where the response was foreseeable was properly excluded. In *Brady*, the defendant manufactured methamphetamine in a wooded area; while he was doing so, he accidentally started a forest fire that required a fairly aggressive firefighting response. In the course of responding to the fire, two firefighting aircraft collided, and the pilots of both aircraft were killed. The defendant was convicted of recklessly setting a fire that caused the deaths of the pilots. On appeal, he argued that the trial court erred in excluding evidence of the negligence of one of the pilots, including, in particular, the pilot's blood alcohol level. In finding that the pilot's blood alcohol level was irrelevant and excludible, the court stated: "Even if [the defendant] had proffered sufficient evidence to support a finding that [the pilot's] alcohol consumption was a substantial factor in causing the midair collision, this finding would not have affected the collision's foreseeability to [the defendant], and thus would not have absolved him of responsibility for the deaths. The relevant question is whether, when recklessly starting the forest fire, [the defendant] could reasonably anticipate that aircraft would be summoned to extinguish the fire and that a fatal collision might result. The question is not whether [the defendant] could reasonably anticipate other causes that might also contribute to the collision. Accordingly, the evidence of [the pilot's] alcohol consumption was properly excluded." (*Brady, supra*, 129 Cal.App.4th at p. 1333, fn. omitted.)

The foregoing principles plainly apply here and support the trial court's ruling. We note the mechanic's proffered testimony did not establish that the "gassing" that may

have occurred was an independent cause of the collisions; according to the mechanic, gassing would have occurred *because* Bartelson was attempting to go from a high speed to a low speed in a relatively short period of time. That circumstance of course is directly connected to Bartelson's unlawful flight and was in no sense an independent cause. (See *Schmies, supra*, 44 Cal.App.4th at p. 49.) Moreover, Bartelson's unlawful high speed flight from law enforcement officers clearly created the risk of automobile collisions and serious injury to innocent members of the public. (See *Schmies*, at pp. 53-56; *Harris, supra*, 52 Cal.App.3d at p. 427; *Pike, supra*, 197 Cal.App.3d at pp. 749-750.) Thus, whatever role Bartelson's brakes may have played at the end of the chase, they were not relevant in determining whether Bartelson's conduct in initiating the high speed chase was a proximate cause of the injuries suffered by Dunker and Mathis. Because the collisions and injuries were plainly foreseeable consequences of Bartelson's high speed flight, his flight was plainly a proximate cause of those injuries. (*Schmies*, at pp. 53-56; *Harris*, at p. 427; *Pike*, at pp. 749-750.) Thus, the trial court did not err in excluding the mechanic's proffered testimony. (*Schmies*, at pp. 53-56; *Brady, supra*, 129 Cal.App.4th at p. 1333.)

II

Following the collision, Bartelson's damaged truck was seized and later destroyed. Prior to trial, Bartelson moved to dismiss under *California v. Trombetta* (1984) 467 U.S. 479, 488 (*Trombetta*). Bartelson argued that the truck's braking system may have produced evidence the collision was caused by some mechanical failure. As we have noted, given all the evidence Bartelson proximately caused the victims' injuries and was

responsible for them, preservation of the truck was not likely to produce admissible exculpatory evidence. Hence, dismissal was not required. (See *Id.* at p. 489; see also *People v. Beeler* (1995) 9 Cal.4th 953, 976.)

DISPOSITION

The judgment of conviction is affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.