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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

LAURA JEAN BRADEN VIRGIL,

Defendant and Appellant.

E052541

(Super.Ct.No. RIF146785)

OPINION

APPEAL from the Superior Court of Riverside County. Janice M. McIntyre\* and Jeffrey Prevost, Judges. Affirmed.

Denise M. Rudasill, under appointment by the Court of Appeal, for Defendant and Appellant.

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\* Retired judge of the Riverside Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Kevin Vienna, Deputy Attorney General, for Plaintiff and Respondent.

I

INTRODUCTION

On September 2, 2009, an information charged defendant and appellant Laura Jean Braden Virgil with leaving the scene of an accident without rendering reasonable assistance to an injured person she struck and without providing her identifying information, a violation of Vehicle Code<sup>1</sup> section 20001, subdivision (a)(1) (count 1); misdemeanor driving under the influence of alcohol resulting in an accident causing injury, a violation of section 23153, subdivision (a) (count 2); and misdemeanor driving with a blood alcohol level over 0.08 resulting in an accident causing injury, a violation of section 23153, subdivision (b) (count 3).

On June 21, 2010, the trial court dismissed count 3, a violation of Vehicle Code section 23153, in the interest of justice. Jury trial commenced on June 23, 2010. On June 24, 2010, after the presentation of evidence, defense counsel made a motion for judgment of acquittal under Penal Code section 1118.1, as to both remaining counts; and an alternative motion to reduce count 1 to a misdemeanor under Penal Code section 17, subdivision (b). The trial court granted the motion for judgment of acquittal as to count

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<sup>1</sup> All statutory references are to the Vehicle Code unless otherwise specified.

2, the driving under the influence count, because it found insufficient evidence to sustain the count. The court denied the motion for judgment of acquittal as to count 1; and denied the motion to reduce count 1 to a misdemeanor. Thereafter, the jury found defendant guilty of the only remaining count, count 1, a violation of Vehicle Code section 20001, subdivision (a)(1) (hit-and-run).

On October 15, 2010, at the sentencing hearing, defendant again made a motion to reduce the conviction to a misdemeanor under Penal Code section 17, subdivision (b). The trial court denied the motion and placed defendant on probation for three years with a condition that she serve 60 days in local custody, to be served on weekends or home detention.

On December 15, 2010, defendant filed a notice of appeal from the judgment.<sup>2</sup>

## II

### STATEMENT OF FACTS

On October 22, 2008, Catherine Robinson lived at the intersection of Hollyoak Way and Almont Way in the Sun City area of Riverside County. About 5:30 p.m., Robinson was washing dishes when she heard tires screeching; she ran outside. Robinson saw defendant driving down Hollyoak, a residential street. When Robinson went out to the sidewalk, she saw defendant's face through the open car window and bent

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<sup>2</sup> On August 31, 2011, defendant filed a petition for writ of habeas corpus "seeking constructive notice of appeal." On November 17, 2011, we granted the deemed motion to consider the notice of appeal as timely filed.

down to tell defendant to slow down. Defendant just glanced at Robinson with a blank stare. Robinson thought “that lady is going to kill someone,” and told her young son and his friend to get out of the street because she was afraid defendant might hit them.

About this time, seven-year-old Joshua R. (the victim) was riding his bike on the sidewalk near the intersection of Hollyoak and Almont while his 12-year-old friend, Jordan, was riding his bike in the street a little ahead of him. Defendant came around the corner nearly on the sidewalk, cutting the victim off. The victim was unable to get out of the way and the middle of defendant’s truck struck him.

The victim then slid under the truck and was dragged for about 37 feet before defendant heard him screaming and stopped. Defendant first sat in the truck. She then got out, looked underneath the truck at the victim, and ran into her house, which was only a few houses away, leaving the victim under the truck. The victim never saw the driver of the truck that hit him.

Robinson had started to return to her house when she heard a “thump.” Robinson did not first hear the sound of screeching tires before the impact. She turned and could see the tail of defendant’s vehicle as it turned the intersection. She then ran toward the sound and saw the victim lying under the truck. He was crying and bleeding from the head, arms, knees and legs; his bicycle had been crushed. Two men ran over, removed the victim from under the truck, and placed him on the truck’s driver seat. One of the men called for help.

In the interim, the victim's friend, Jordan, had run to the victim's house to get the victim's 25-year-old brother, Ralphie Pimentel. Pimentel started to run to the accident scene when he saw defendant's son, Keith Degoede, carrying the victim home. Pimentel took the victim, who was gushing blood from his forehead, and placed him in his truck to take him to the hospital when the ambulance arrived. The paramedics took the victim to the hospital.

As deputies with the Riverside Sheriff's Department talked with Pimentel, Degoede approached and talked with Deputy Andrew Dinh. Deputy Dinh thought Degoede was being evasive; Degoede stated that the victim had been involved in a collision with an unknown vehicle driven by an unknown female.

Degoede eventually admitted that defendant had been involved in the accident and that she was inside her home. He told the deputy that defendant had come into the house, stated that she had been in an accident, and told him to "go take care of it." In response, Degoede stated that he went outside, picked up the victim, washed him off and took him home. He also removed the victim's bicycle from the collision site and returned it to the victim's house. Degoede additionally removed defendant's truck from the scene and parked it some 2000 feet away.

At this point, Deputy Dinh walked over to defendant's house, which was about 200 feet from the accident scene. The deputy asked defendant to come outside and talk with him. When she did, he immediately noticed the odor of alcohol coming from her.

Another deputy was called to conduct a DUI investigation.<sup>3</sup> Defendant eventually stated that she was making a right turn onto Almont from Hollyoak when she heard screaming and stopped the truck.

During his investigation, Deputy Dinh found blood on the truck's undercarriage and on the street near the collision site.

The victim suffered a head wound requiring staples as well as injuries and burns to his hand, forearms, legs, knees, shoulder and back. He still had scars and burn marks on his wrists and elbow at the time of trial.

At trial, Degoede<sup>4</sup> testified that he was doing laundry at defendant's house when she ran into the house with blood on her clothes, crying hysterically. Defendant told Degoede that she had been in an accident and hit a little boy in front of the house. Degoede told defendant to calm down and wash her hands. He testified that he might have told defendant that he would take care of it. Defendant was not physically hurt, and Degoede thought the blood on defendant's clothes was from the little boy.

Degoede then ran outside and saw his truck, the one defendant had been driving, parked in the middle of the street between 30 to 40 feet from the house. The victim was lying on the truck's seat, crying, with a few "scrapes and cuts." Degoede told the two

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<sup>3</sup> After testimony during the trial, the trial court granted defendant's acquittal motion as to the drunk driving charge.

<sup>4</sup> Degoede was charged as a codefendant and pled guilty to destroying and/or concealing evidence.

men helping the victim to step back, saying he wanted to help the victim. One of the men told Degoede that he had already called 911.

Degoede did not wait for the police or the ambulance. Instead, he testified that he gave the victim water, cleaned the rocks and other debris from his hands, and took him home. Degoede stated that he could not remember if he told the victim's brother that his mother was the person driving the truck involved in the collision.

Degoede testified that when he returned home, defendant was still crying. After talking with defendant, he returned to the victim's house and saw that the ambulance had arrived. Degoede testified that he had moved his truck so the fire engine could get by and that he returned the bicycle to the victim's house.

### III

#### ANALYSIS

Defendant contends that the trial court abused its discretion in denying her motion to reduce her felony hit-and-run to a misdemeanor under Penal Code section 17, "because the nature of [defendant's] offense was minimal when compared to the usual felony hit and run offense; she had no real prior criminal history as it consisted of a few Vehicle Code offenses and related offenses; the particulars of her background, character, and prospects weighed in favor of reduction; because her demeanor at trial indicated she had positive character traits; and because other factors usually taken into account when making similar sentencing decisions were favorable for reduction."

Penal Code section 17, subdivision (b), expressly gives the trial court the power to reduce a wobbler filed as a felony to a misdemeanor. (*People v. Mendez* (1991) 234 Cal.App.3d 1773, 1779.)

The California Supreme Court, in *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968 (*Alvarez*), pointed out the appropriate considerations for reducing a felony to a misdemeanor under Penal Code section 17. The court held, “the decision whether to reduce a wobbler [is] solely ‘in the discretion of the court.’ By its terms, the statute sets a broad generic standard. [Citation.] The governing canons are well established: ‘This discretion . . . is neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with the spirit of the law, and in a manner to subserve and not to impede or defeat the ends of substantial justice. [Citations.]’ [Citation.] ‘Obviously the term is a broad and elastic one [citation] which we have equated with “the sound judgment of the court, to be exercised according to the rules of law.” [Citation.]’ [Citation.] Thus, ‘[t]he courts have never ascribed to judicial discretion a potential without restraint.’ [Citation.] ‘Discretion is compatible only with decisions “controlled by sound principles of law, . . . free from partiality, not swayed by sympathy or warped by prejudice . . . .” [Citation.]’ [Citation.] ‘[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue.’ [Citation.]

“On appeal, two additional precepts operate: ‘The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary.

[Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ [Citation.] Concomitantly, ‘[a] decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” [Citations.]’ [Citation.]

“We find scant judicial authority explicating any criteria that inform the exercise of [Penal Code] section 17(b) discretion. [Citation.] However, since all discretionary authority is contextual, those factors that direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his traits of character as evidenced by his behavior and demeanor at the trial.’ [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, rule 410. The corollary is that even under the broad authority conferred by [Penal Code] section 17(b), a determination made outside the perimeters drawn by individualized consideration of the offense, the offender, and the public interest ‘exceeds the bounds of reason.’ [Citations.]” (*Alvarez, supra*, 14 Cal.4th at pp. 977-978, fn. omitted.)

In this case, at the sentencing hearing, the sentencing judge indicated that the trial judge was unable to preside over the case. Both defense counsel and the prosecutor agreed to proceed with the case. The judge indicated that he had read the probation report, and confirmed that both counsel had done so too. Defense counsel then moved,

again, to reduce defendant's charge to a misdemeanor. Counsel stated: "[L]ooking at the facts of the case, it was an accident that occurred in front of her home. Essentially she went inside her home instead of staying outside the home. She was there long enough for aid to be rendered to the child who was involved in the accident. So I believe under the circumstances that the charge should be reduced to a misdemeanor or in the alternative that she be put on probation and have the opportunity to have the matter reduced to a misdemeanor after successful completion."

The prosecutor submitted on the recommendation given by the probation report.

In the probation report, the probation officer first noted that defendant "appeared to be sincere in her remorse for the instant offense; however, upon listening to the defendant's version of the events, several items of concern were revealed, which brought her sincerity into doubt." The probation officer noted as follows: "The defendant stated she had received a Medical Assistant's certificate from Concord Career Institute and aspires to be a nurse; yet, she did not attempt to provide even the most basic care for the victim. The defendant stated she was going home to call 911, but never attempted to call for medical assistance. . . . The defendant attempted to blame the case being filed on her son's verbal racial outburst. Several times during the interview, the defendant was more concerned about the future effects of a felony conviction upon her career plans than the injuries she caused to a nine-year-old child." Then, the probation officer opined that "defendant stated she was remorseful; however, her constant attempts to place fault upon others demonstrated she is not." The probation officer went on to state that "the

defendant has not fully considered the seriousness or consequences of her actions of October 22, 2008; however, it is believed her actions have permanently scarred a child both physically and emotionally.”

Because defendant was statutorily eligible for a grant of probation, the probation officer recommended probation period of three years. However, “to impress upon the defendant the seriousness of her criminal conduct,” the probation officer also recommended defendant serve 280 days in custody.

At the hearing, the parties, including the judge, agreed that the 280 days’ custody recommendation in the probation report “seemed excessive given the circumstances.” Then the court provided that it had thoroughly reviewed the record on this case, recounting the events that occurred. The court then sentenced defendant to three years of probation and 60 days in custody.

In sum, the court considered defendant’s background and the instant offense when it denied defendant’s motion to reduce the offense of felony hit-and-run to a misdemeanor. The court’s decision was neither irrational nor arbitrary. To the contrary, as stated in detail above, the court carefully and thoughtfully rendered its decision. Based on the above, we find no abuse of discretion.

IV

DISPOSITION

The judgment is affirmed.

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MCKINSTER  
Acting P.J.

We concur:

RICHLI  
J.

MILLER  
J.