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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID STEPHAN HOPKINS,

Defendant and Appellant.

G047129

(Super. Ct. No. 11WF2643)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Christopher J. Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed with directions.

Matthew A. Siroka, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton, Heather
M. Clark, and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and
Respondent.

David Stephan Hopkins appeals from a judgment after a jury convicted him of aggravated assault on a peace officer. Hopkins argues insufficient evidence supports his conviction and this court should direct the clerk of the superior court to prepare a new minute order omitting any reference to his driver's license being revoked. Neither of his contentions have merit. We affirm the judgment but remand the matter to the trial court for it to make the required findings under Vehicle Code section 13351.5.

FACTS

One evening, Officers Juan Delgado and Brian Dalton were on patrol at Fairlane Trailer Park in Garden Grove. They were in an all-black Crown Victoria police car equipped with interior police light bars, spotlights, and an in-car video system, which captured the events of the evening. As Delgado drove through the trailer park, he saw a green Kia sedan drive in the opposite direction and stop in front of space No. 90. Delgado had previous contacts with the occupant of that trailer, Robert Green, who was on probation and subject to search and seizure probation conditions.

Delgado drove towards the Kia and identified Green after shining the patrol car spotlight into the front passenger side area of the car. A man later identified as Hopkins was in the driver's seat. Delgado parked five to 10 feet in front of the Kia and slightly to the side as he intended to conduct a probation search of Green. As Delgado stepped out of the car, he yelled, "Robert, stop." Delgado's left foot was on the ground and his torso was emerging from the patrol vehicle, when he heard the Kia's engine rev and the tires squeal. Dalton yelled at Delgado to get back inside the car. Delgado quickly got back inside the patrol car as the Kia accelerated and struck the patrol car's driver's side door, slamming the door shut and barely missing Delgado's leg; Delgado was not injured.

Hopkins stopped the Kia a few feet from the patrol car, and Delgado got out of the car, drew his weapon, walked to the Kia's passenger side, pointed his gun at Hopkins and Green, and told them to put their hands in the air. Dalton got out of the car,

drew his weapon, pointed it at Hopkins, and told him to put his hands in the air. Neither man complied. In fact, Green put his hands in his sweat shirt pockets. Delgado told Hopkins to take the keys out of the ignition. Hopkins put the Kia in drive and fled. Officers pursued the Kia but lost sight of the car once they exited the trailer park.

Delgado and Dalton returned to the trailer park and spoke with Green's mother. As a result of their investigation, officers located the Kia at Hopkins's son's house; the Kia had damage consistent with that found on the patrol car.

A few days later, during a second search of a residence at the trailer park, officers uncovered, yes literally uncovered, Hopkins under a pile of clothes in a bedroom closet. Officers arrested him.

After advising Hopkins of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, Hopkins told an officer he was on probation for possession of methamphetamine. Hopkins admitted he had not seen his probation officer in eight months and he believed probation was searching for him. Hopkins denied he was at the trailer park the night the incident occurred, but he admitted being there earlier that day.

An information charged Hopkins in count 1 with aggravated assault on a peace officer, Delgado, with a vehicle (Pen. Code, § 245, subd. (c)). The information contained an "ADW Vehicle CVC 13351.5" notice.

At trial, Delgado testified to the circumstances of the incident as we describe above. Additionally, Delgado explained what he and Dalton were wearing that night: jeans, and a black polo and/or windbreaker with the words "Gang Unit" on the right chest area and the word "Garden Grove Police" on the left chest area. On the back was "Police" and "Gang Unit." On cross-examination, Delgado stated that after the incident he prepared a police report and a supplemental police report. Delgado admitted that in both reports he never stated he identified himself as a police officer before the Kia hit the patrol vehicle or that he heard squealing tires before the Kia hit the patrol vehicle. He did not activate his police lights before the Kia struck the patrol car.

Dalton also testified concerning the event consistent with Delgado's testimony. On cross-examination, though, Dalton testified he did not hear squealing tires before the Kia hit the patrol vehicle.

The jury convicted Hopkins of aggravated assault on a peace officer as charged in count 1. In her sentencing brief, the prosecutor requested "the [c]ourt make a finding that the deadly weapon used in the present case was a vehicle, that the [c]ourt indicate as such on the abstract of judgment, and that a copy of that abstract be sent to the Department of Motor Vehicles." The probation report recommended Hopkins's driver's license be permanently revoked pursuant to Vehicle Code section 13351.5. At the sentencing hearing, the trial court indicated it had read and considered the probation report. The court sentenced Hopkins to the low term of three years in prison. The court did not orally make the findings as required by Vehicle Code section 13351.5. The minute order, however, states, "As to count(s) 1, court orders driver's license suspended for 99 [y]ear(s)."

DISCUSSION

I. *Sufficiency of the Evidence*

Hopkins argues insufficient evidence supports his conviction for aggravated assault on a peace officer because he acted foolishly and dangerously but without the required intent. As we explain below, sufficient evidence supports his conviction.

"The law governing sufficiency-of-the-evidence challenges is well established [Citations.] In reviewing a claim for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt.

[Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.]” (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639.)

Penal Code section 245, subdivision (c), states: “Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.”

“The mental element for the assault charge is that ‘assault does not require a specific intent to cause injury or a subjective awareness of the risk that an injury might occur. Rather, assault only requires an intentional act and actual knowledge of those facts sufficient to establish that the act by its nature will probably and directly result in the application of physical force against another.’ (*People v. Williams* (2001) 26 Cal.4th 779, 790) ‘The mens rea [for assault] is established upon proof the defendant willfully committed an act that by its nature will probably and directly result in injury to another, i.e., a battery. Although the defendant must intentionally engage in conduct that will likely produce injurious consequences, the prosecution need not prove a specific intent to inflict a particular harm. [Citation.] The evidence must only demonstrate that the defendant willfully or purposefully attempted a “violent injury” or “the least touching,” i.e., “any wrongful act committed by means of physical force against the person of another.” [Citation.] In other words, “[t]he use of the described force is what counts, not the intent with which same is employed.” [Citation.] Because the offensive

or dangerous character of the defendant's conduct, by virtue of its nature, contemplates such injury, a general criminal intent to commit the act suffices to establish the requisite mental state. [Citation.]' (*People v. Colantuono* (1994) 7 Cal.4th 206, 214-215)" (*People v. Golde* (2008) 163 Cal.App.4th 101, 108-109, fn. omitted.)

Here, the record includes sufficient evidence from which the jury could reasonably conclude Hopkins committed aggravated assault on Delgado, a peace officer, with a vehicle. The evidence at trial established Hopkins had a motive for not wanting to speak with the police—he believed the probation department was looking for him. There was overwhelming evidence Delgado and Dalton were police officers, as they were driving a Crown Victoria with internal police bar lights and spotlights on both sides of the car. When Delgado got out of his car, he yelled for Green to stop, although he could not remember if he identified himself as a police officer. We are certain though that based on the type of vehicle Delgado and Dalton were driving and Delgado's command, not to mention the fact the shirt or jacket Delgado wore identified him as a Garden Grove Police officer with the gang unit, that neither man could have any question Delgado and Dalton were police officers.

There was also evidence that when Delgado ordered Green to stop, Hopkins revved the Kia's engine and accelerated. Although Dalton testified he did not hear the tires squeal, Delgado heard squealing tires, and Delgado was standing outside the patrol car. Hopkins then drove the Kia into the patrol car's driver's side door just as Delgado quickly got back inside the patrol car. From this evidence, the jury could certainly conclude Hopkins willfully drove the Kia into the patrol car door and had Delgado not astutely and quickly got back inside the car, the patrol car door would have slammed shut against his left leg potentially ending his career as a police officer. Contrary to Hopkins's assertion otherwise, the only reasonable explanation is not that it was an accident because

he was blinded by the spotlight and the street was narrow.¹ Instead, there were two explanations, one that it was an accident, and two that Hopkins intentionally drove the Kia into the patrol car's door in an attempt to slam the door against the left side of Delgado's body, thereby incapacitating Delgado and preventing the officers from apprehending him.

Additionally, Hopkins's claim is merely an argument for a different interpretation of the evidence, an argument which misconstrues our standard of review. Finally, the trial court instructed the jury with CALCRIM No. 3404, "Accident." The jury heard the evidence and defense counsel's argument it was an accident, and rejected Hopkins's defense.

Hopkins relies on *People v. Gonzales* (1999) 74 Cal.App.4th 382 (*Gonzales*),² and *People v. Lara* (1996) 44 Cal.App.4th 102 (*Lara*), neither of which helps him here. In *Gonzales, supra*, 74 Cal.App.4th at pages 389 to 392, the court addressed the issue of whether the trial court erred in failing to instruct the jury on accident against a charge of inflicting corporal injury on a cohabitant. In *Lara, supra*, 44 Cal.App.4th at pages 108 to 111, the court addressed the issue of whether the trial court erred in instructing the jury on accident. Here, as we explain above, the trial court instructed the jury on the defense of accident, and Hopkins concedes the instruction was proper. Thus, sufficient evidence supports Hopkins's conviction for aggravated assault on a peace officer.

¹ In support of his claim it was an accident, Hopkins invited our attention to exhibit No. 4. Exhibit No. 4, however, is not a part of the record. It is no consequence though as we conclude the record includes substantial evidence from which the jury could certainly conclude Hopkins committed a willful act that by its nature would probably and directly result in an injury to a police officer.

² *Gonzales, supra*, 74 Cal.App.4th 382, was overruled on other grounds in *People v. Anderson* (2011) 51 Cal.4th 989, 998, fn. 3.

II. *Driver's License Revocation*

Hopkins contends this court should order the clerk of the superior court to prepare a new minute order “rescinding the driver’s license suspension” because the trial court did not make the findings as required by Vehicle Code section 13351.5, and the superior court does not have the authority under that statute to revoke his license. The Attorney General agrees the trial court did not have the authority to revoke Hopkins’s license, as that authority lies with the Department of Motor Vehicles (DMV) alone. The Attorney General, however, asserts this court should remand the matter to the trial court so that court can make the required findings. We agree with the Attorney General.

Vehicle Code section 13351.5, subdivision (a), provides: “Upon receipt of a duly certified abstract of the record of any court showing that a person has been convicted of a felony for a violation of [s]ection 245 of the Penal Code and that a vehicle was found by the court to constitute the deadly weapon or instrument used to commit that offense, *the department immediately shall revoke the privilege of that person to drive a motor vehicle.*” (Italics added.)

The Attorney General concedes the trial court did not have the authority to revoke Hopkins’s license and the trial court did not make the required findings under Vehicle Code section 13351.5. Thus, the minute order revoking Hopkins’s license is invalid. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [abstract of judgment not judgment of conviction and does not control if different from trial court’s oral judgment and may not add to or modify judgment it purports to summarize].) The sole issue then is the proper remedy.

Hopkins argues this court should order the clerk of the superior court to prepare a new minute order omitting the driver’s license suspension because the trial court exercised its discretion and simply chose not to make the finding. The Attorney General counters we should remand the matter to the trial court to make the required findings pursuant to Vehicle Code section 13351.5.

Vehicle Code section 13351.5 requires two distinct findings. First, there must be a conviction of Penal Code section 245. Second, the court must make the determination a vehicle was used as a deadly weapon that resulted in the conviction. Vehicle Code section 13351.5 is clear such a determination is to be made by the trial court.

Based on the foregoing, we remand to the trial court for the limited purpose of it making the required finding pursuant to Vehicle Code section 13351.5 as to whether Hopkins used a vehicle to commit the offense. If the trial court makes such a finding, it must modify its minute order and the abstract of judgment accordingly and forward the modified abstract of judgment to the DMV.

Hopkins's reliance on Vehicle Code section 1803, subdivision (a), and *In re Gaspar D.* (1994) 22 Cal.App.4th 166 (*Gaspar D.*), is misplaced. First, we do not read Vehicle Code section 1803, subdivision (a), as rendering the trial court's duty as discretionary when a defendant is convicted of violating Penal Code section 245 while using a vehicle. That section controls when a defendant is convicted of violating a number of specified provisions.³ Second, *Gaspar D.*, *supra*, 22 Cal.App.4th 166, did not involve Vehicle Code section 13351.5. It concerned Vehicle Code section 13350.

³ Vehicle Code section 1803, subdivision (a)(1), provides: "The clerk of a court in which a person was convicted of a violation of this code, was convicted of a violation of subdivision (a), (b), (c), (d), (e), or (f) of [s]ection 655 of the Harbors and Navigation Code pertaining to a mechanically propelled vessel but not to manipulating any water skis, an aquaplane, or similar device, was convicted of a violation of [s]ection 655.2, 655.6, 658, or 658.5 of the Harbors and Navigation Code, a violation of subdivision (a) of [s]ection 192.5 of the Penal Code, or a violation of subdivision (b) of [s]ection 5387 of the Public Utilities Code, was convicted of an offense involving use or possession of controlled substances under Division 10 (commencing with [s]ection 11000) of the Health and Safety Code, was convicted of a felony offense when a commercial motor vehicle, as defined in subdivision (b) of [s]ection 15210, was involved in or incidental to the commission of the offense, or was convicted of a violation of any other statute relating to the safe operation of vehicles, shall prepare within five days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted.

DISPOSITION

We remand the matter to the trial court for the limited purpose of the court making the required finding pursuant to Vehicle Code section 13351.5, as set forth in the opinion. We affirm the judgment in all other respects.

O'LEARY, P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.

If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within five days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.”