

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MATTHEW S., a Person Coming  
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW S.,

Defendant and Appellant.

G047814

(Super. Ct. No. DL042261)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nick A. Dourbetas, Judge. Affirmed.

David R. Greifinger, 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, Charles C. Ragland, Marissa Bejarano and Parag Agrawal, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \*

The district attorney filed a Welfare and Institutions Code section 602 petition alleging Matthew S. (minor) killed Sung Lee on September 12, 2011, as a result of his negligent operation of a motor vehicle in violation of Penal Code section 192, subdivision (c)(2) (all undesignated statutory references are to the Penal Code unless otherwise stated). At the conclusion of the trial, the court found the allegations in the petition true beyond a reasonable doubt, declared minor a ward of the juvenile court and placed him on probation. The court did not impose any custody time as a condition of probation. Minor contends the court's finding is not supported by the evidence. We affirm.

## I FACTS

We set forth the facts “in the light most favorable to the [judgment].” (*People v. Lewis* (1990) 50 Cal.3d 262, 277.) The weather on the morning September 12, 2011, was clear, cool, and sunny, with the sun shining brightly in the east. Early that morning, Arturo Cortez parked his gardening truck in the bike lane on the south side of Summit Park, approximately 432 feet from the intersection of View Terrace and Summit Part. Summit Park is a two-lane east-west road with double yellow lines between the lanes and six-foot bike lanes on both sides of the road. The road curves to the north and has a downhill grade for eastbound traffic. There is no parking on the south side of the road. Cortez placed six orange cones, five paces apart and angling from his left rear bumper to the curb.

Seventy-seven-year-old Sung Lee was driving eastbound on Summit Park when his Lexus veered into the bicycle lane and hit the rear of Cortez's truck. Cortez told a police officer Lee was probably traveling about 45 miles per hour. In response to Cortez's question about what had happened, Lee said, “The sun didn't let me see.” After the collision, the Lexus was completely within the bike lane. As it had been before, the gardening truck protruded slightly into the eastbound lane. Cortez later saw Lee standing

by the open driver's door of the Lexus, bent over and looking inside. About five minutes after that collision, while Cortez had his head down attempting to make a telephone call, he heard a second collision.

Minor, who was 16 years old, got his driver's license in mid-August 2011. The new school year started the week of September 7. He drove to school two days that week. His mother drove him to school the year before.

Minor's school started at 7:30 a.m. It takes about five minutes to drive from minor's residence, just down the street from Lee's home, to school. Although minor left for school at 7:20 a.m. the first week of school, on September 12, he left his house earlier because he had a hard time finding a parking space the week before.

According to statements he made to the police, the fog on his windshield was "terrible" when he left his house that morning. He left his street and turned onto View Terrace. He drove on View Terrace to where it intersects with Summit Park. He turned right onto Summit Park. He said he had problems seeing out of his windshield that morning because of fog on his windshield. He said the fog kept "coming up and up." He turned on his defroster, turned the heater up to high, and turned on his windshield wipers. Minor said he could not see out of his window as he was driving on Summit Park because of the fogged windshield. He accelerated to about 30 miles and the Volkswagen Jetta he was driving stopped when he hit something.

Minor's vehicle hit the left rear quarter panel corner and wheel of Lee's Lexus in a sideswiping fashion. Then it struck Lee, shattering the Jetta's windshield. The Jetta came to a stop when it hit the left rear corner of the gardening truck. Lee was lying across the Jetta's windshield with his legs trapped beneath the gardening truck. Minor got out of the Jetta and called 911. Lee died from his injuries.

It appears the driver's door of the Lexus was open at the time of the collision and was hit by the Jetta. Lee apparently was not standing inside the door because there was no blood on the inside of the door. Based on the physical evidence, it

appears Lee was either standing on the painted line separating the bike lane from the eastbound lane, in the bike lane, or in the eastbound lane near the painted line separating the bike lane from the eastbound traffic lane. A civilian traffic investigator with the Irving Police Department testified it would take about 15 seconds with average acceleration to travel from the intersection of View Terrace and Summit Park to the point of the collision.

When police responded to the scene, minor's mother, Lee's wife, employees of the gardening company, and Erika Zelmer were already present. Zelmer's vehicle was parked in front of the gardening truck. Minor's mother and Mrs. Lee each had parked behind the Lexus. During a conversation with Officer Christopher Ostrowski at the scene, minor talked about the foggy condition of his windshield and after his mother interjected about the sun, minor added that the sun was in his eyes.

During questioning at the police department, minor said his window got "really foggy" as he turned onto Summit Park. He said his window began to "fog and frost everything and I think the sun and I just couldn't see and it, it happened." He said he got up to 30 miles an hour on Summit Park and had "issues with the defroster." The windshield got frosty and he "couldn't see out of the window really." When asked if he could tell where he was in the lane, he said he "had a bit of an idea." He did not see the Lexus or the gardening truck. Neither did he see Lee.

When an officer checked the Jetta after the accident, he found the defroster was on, the fan was set on high and the heater was set at the highest setting. The air should be set on cold, not hot, to clear fog from a windshield. Irvine Police Officer Raymond Vellarde said the evidence indicated minor drove off the roadway, colliding with the Lexus, then struck Lee, pinning him between the Jetta and the gardening truck. Vellarde opined the cause of the collision was the minor driving at an unsafe speed for existing driving conditions: difficulty seeing through the front windshield due to the foggy condition of the windshield in combination with the "blurring morning sun." The

day after the incident at approximately 7:09 a.m., Vellarde drove eastbound on Summit Park by the location where the collision had occurred. He said the “sun was bright,” but his view was unobstructed and he could see the double yellow lines between the lanes.

### *Defense Evidence*

Zelmer arrived at the scene of the accident after minor’s mother and Lee’s wife, and before the police arrived. She was sure there was fog around the borders of the Jetta’s windshield. She heard minor say “I don’t know how this happened. I couldn’t see. The sun. The sun. I don’t know how this happened.” Zelmer has driven on Summit Park on September mornings around 7:00 a.m. “lots of times.” Driving eastbound at that time the sun has made it “difficult to see” and had “blocked [her] view.” The first time it happened was “a little scary.”

Minor testified he borrowed his aunt’s car to drive to school because his mother could not drive him that day. The car’s windows were fogged and frosted that morning. He started the ignition and turned on the defroster and windshield wipers, and plugged in his iPod before backing out of the driveway. As he drove down the street, the windows started to clear. He proceeded slowly to View Terrace and stopped at the stop sign. He waited until traffic cleared and then made a right turn onto View Terrace. The windshield “was getting better” and he drove “a little bit faster because [he] could see more.” He stopped for the stop sign at the intersection of View Terrace and Summit Park and rolled down the driver’s side window “so [he] could see oncoming traffic.” He said he had the windshield wipers on and his windows were clear when he made the right-hand turn onto Summit Park, although there was still “fog” where the windshield wipers “were not hitting.” Minor said he could see “through the middle” of the windshield. He noticed the sun and flipped down the sun visor and before he “could do anything,” he collided with another car. On cross-examination, he admitted he told police the fog

persisted despite having the windshield wipers and the defroster on, and that he did not mention the sun until his mother brought it up.

### *The Trial Court's Decision*

The court gave Lee's statement about the sun little or no weight because it knew nothing about Lee's driving that morning, and stated, "Lee was likely negligent in his driving." The court noted minor's testimony was "significantly different" from statements he gave the police, and found his testimony about the windshield being clear was not credible. The court concluded minor's windows were foggy, causing him not to be able to see, and minor drove at an unsafe speed and manner given the condition of his windshield. As a result, the court found the allegation of vehicular manslaughter true beyond a reasonable doubt.

## II

### DISCUSSION

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.]" (*People v. Steele* (2002) 27 Cal.4th 1230, 1249.) We must accept all assessments of credibility made by the trier of fact and determine if substantial evidence exists to support each element of the offense. (See *People v. Carpenter* (1997) 15 Cal.4th 312, 387.) We presume in support of the judgment the existence of every fact that could reasonably be deduced from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) We may reverse for lack of substantial evidence only if "upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction]." [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) Particularly pertinent in the present case, it bears noting we do not ask ourselves whether we believe the evidence established guilt beyond a reasonable doubt.

(*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) “Instead, the relevant question is 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 beyond a reasonable doubt. [Citation.]” (*Id.* at p. 319.) Thus, our power ““begins and ends with the determination of whether there is any substantial evidence, contradicted or uncontradicted which will support the conclusions reached by the trial court [citation]. All evidence most favorable to respondents must be accepted as true and that which is unfavorable discarded as not having sufficient verity to be accepted by the trier of fact. If the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed [citation].”” (*In re Bittany H.* (1988) 198 Cal.App.3d 533, 549.) “The standard of review is the same when the prosecution relies mainly on circumstantial evidence. [Citation.]” (*People v. Valdez* (2004) 32 Cal.4th 73, 104.)

Section 192, subdivision (c)(2), defines vehicular manslaughter without gross negligence. That section applies when a death occurs as the result of an individual driving “a vehicle in the commission of an unlawful act, not amounting to felony, but without gross negligence; or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence.” (§ 192, subd. (c)(2).) The negligence required by the statute is no greater than ordinary negligence. (*People v. DeSpensa* (1962) 203 Cal.App.2d 283, 290-291.) Minor contends the evidence was insufficient to conclude he committed vehicular manslaughter because the court “ignored and discounted evidence about the sun’s blinding effects and Lee’s location as intervening causes of Lee’s death.” (Boldface omitted.) We disagree.

That Lee may have been just within the traffic lane, if he was not on the line marking the bike lane or within the bike lane itself, is of no benefit to minor. The fact remains that Lee’s death occurred because minor proceeded to drive 30 miles an hour despite being unable to see due to fog on his windshield. “No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for

weather, *visibility*, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.” (Veh. Code, § 22350, italics added.) Continuing to drive despite being unable to see due to a fogged windshield is negligent. Minor’s negligence was the proximate cause of Lee’s death if it was a *substantial factor* in causing the death. (*People v. Schmies* (1996) 44 Cal.App.4th 38, 47.) As a result of minor’s negligence, he did not see Lee, Lee’s Lexus, or the gardening truck parked in the bike lane. He drove into the bike lane, hitting both vehicles and killing Lee. Even if Lee was standing in the traffic lane when minor’s vehicle struck him after hitting the Lexus, the court found minor’s negligence in driving when he could not see through the windshield because it was fogged up was a substantial factor in Lee’s death. We cannot say that as a matter of law the evidence does not support the court’s implied finding.

There was evidence to the effect that the windshield was clear and that the collision occurred when minor became blinded by the sun. However, there was also evidence the collision was the result of minor driving despite being unable to see through the windshield due to the foggy condition of the windshield. The trier of fact found the latter evidence convincing. As we cannot find that “upon no hypothesis whatever is there sufficient substantial evidence to support” the court’s determination, we cannot conclude the evidence was insufficient. (*People v. Bolin, supra*, 18 Cal.4th at p. 331.)<sup>1</sup>

Neither did the court ignore the evidence of the sun’s effect that morning. Although Vellarde testified the sun can never be a defense to a traffic collision, the court struck that statement. Rather, the court found minor’s testimony about the windshield being clear and the sun being an intervening cause was not credible. The court found

---

<sup>1</sup> Minor asserts in his reply brief that Lee’s stepping into the path of minor’s vehicle would be a superseding cause of Lee’s death. We reject the argument for two reasons. First, the issue was raised in the reply brief. (*American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.) Second, there is no evidence suggesting Lee stepped in front of minor’s vehicle.

minor's statements to the police about the foggy windshield were accurate. We defer to the trial court's credibility determination. (*People v. Jones* (2013) 57 Cal.4th 899, 917.)

III

DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.