Filed 12/29/06 In re Antonio L. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re ANTONIO L., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ANTONIO L., Defendant and Appellant.	A112419 (Contra Costa County Super. Ct. No. J02-02478)

Antonio L. (Antonio) appeals from an order of the Contra Costa Juvenile Court finding he committed vehicular manslaughter and other related offenses. He claims (1) the juvenile court erred by denying his motion to suppress his statements that he was the driver of the vehicle in question; (2) the juvenile court improperly relied exclusively on his admission to "establish the existence of a criminal agency as the cause of the injury" in violation of the corpus delicti doctrine; (3) there was insufficient evidence supporting a finding that he was the driver of the vehicle; and (4) the juvenile court erred by failing to characterize alternative felony-misdemeanor offenses (wobbler offenses) as misdemeanors or felonies.

The juvenile court should have characterized the wobbler offenses as misdemeanors or felonies and we therefore remand the matter for the juvenile court to do so, but because the remaining claims are without merit, we affirm in all other respects.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 26, 2005, a petition was filed in San Bernardino County Juvenile Court alleging that Antonio committed the following offenses: (1) vehicular manslaughter; (2) evading a peace officer and causing death while driving; (3) driving with a blood alcohol level of over .08 percent and causing injury; (4) driving under the influence of alcohol and causing injury; and (5) driving without a license. On July 13, 2005, after a contested jurisdictional hearing, the juvenile court sustained counts one through four and dismissed count five. The matter was transferred to Contra Costa County, and at a subsequent dispositional hearing in the Contra Costa Juvenile Court, the court imposed a placement of six years in the California Youth Authority, which was suspended pending successful completion of placement in a locked facility. Antonio filed a timely notice of appeal.

The charges against Antonio arose out of an incident on April 25, 2005. Sergeant Harlan Maass of the San Bernardino Police Department was on duty that night, driving a marked patrol car. According to Maass, at approximately 1:14 a.m., he observed a black Ford Explorer (Explorer) pass him in the opposite direction driving at approximately 90 miles per hour in a 40 or 45 mile-per-hour zone. After the Explorer went through a red light, Maass made a U-turn and followed it without activating his emergency lights or siren. The Explorer "blew past" several other vehicles heading in the same direction, swerving around them without slowing down.

Maass testified that he accelerated "as fast as [he] could" but the Explorer pulled away from him. After the Explorer ran through another red light, Maass activated his emergency lights and siren to get through an intersection. At one point, the Explorer came to a full stop and backed up across the road before taking off once again, allowing Maass to get closer to the vehicle. The Explorer continued along the road, swerving on and off the roadway several times. Then, suddenly, it veered left onto the shoulder and it appeared the passenger side tires were caught in the dirt and the driver had lost control of the vehicle. The Explorer rolled over from side to side two or three times, and as it rolled, Maass saw a body "fly[] through the air" and land on the pavement, although he did not

see from which side of the vehicle the person was ejected. Maass pulled up behind the Explorer, and when he looked inside, he saw Antonio, whose body was in a vertical position, lying against the inside of the passenger side wall. Maass did not see whether Antonio was wearing a seat belt.

After looking briefly inside the vehicle, Maass ran to the person who had been ejected from the Explorer and found him twitching involuntarily, with blood streaming out of his right ear. Maass called out to the person several times but got no response. He then returned to the Explorer, looked through the rear window and saw that it was completely shattered. He also saw that Antonio's head was now facing the rear window and that his feet were towards the front windshield. He noticed at this time that Antonio was not strapped into a seat belt.

Maass told Antonio to "stay put" because medical aid was on the way. Antonio appeared to be dazed and gave several unintelligible responses when Maass asked him his name. When a backup officer, Jerald Beall, arrived at the scene, Maass returned to the person laying on the roadside and found the body in a pool of blood and not moving. Maass concluded the person was dead.

Beall testified he was the first backup officer to arrive at the scene. He saw the Explorer on its side and a person lying on the shoulder of the roadway about 100 yards away from the vehicle. He immediately went to the vehicle and saw Antonio inside in a contorted position with his feet towards the passenger compartment and his torso in the rear seat area. Beall could not tell whether Antonio was wearing a seat belt. Beall asked if there were any weapons inside the vehicle, and Antonio said no. Beall asked who was driving, and Antonio responded, "I was." Beall then asked whether Antonio could feel his legs, and Antonio responded that he could not.

San Bernardino Police Officer Sharon McFadden, who also arrived at the scene shortly after the incident, testified that she saw Antonio in the Explorer but did not look to see whether he had a seat belt on. McFadden stood by until Antonio was removed from the vehicle and put into an ambulance, which she followed to the hospital in order to monitor Antonio. Once inside the hospital, McFadden heard Antonio "being extremely

uncooperative" with medical personnel. McFadden heard Antonio tell some members of the medical staff that he was driving the Explorer. She also testified that she heard a nurse ask Antonio whether he was wearing a seat belt, and Antonio respond that he was, pointing to his right hip and mentioning that the buckle was at the right side of his body.

At some point, McFadden began asking what she described as "investigation" questions. She testified that Antonio was not under arrest while he was being treated by medical personnel or while she spoke to him. She explained that when she began asking him questions, the matter was still in the investigatory phase and she had not identified him as a suspect in a criminal offense. McFadden also testified that she did not handcuff Antonio because he was injured, but acknowledged that she would not have allowed Antonio to get up and leave the hospital had he chosen to do so. McFadden did not advise him of his *Miranda*[1] rights.

McFadden asked Antonio why he did not stop once the police activated their lights, and Antonio responded that it was because he was drunk. Based on this response and Antonio's response to medical personnel, McFadden inferred that he was driving. She told him that being drunk was a misdemeanor and not worth running from the police. Antonio explained that he also did not have a driver's license and he was "wanted" by the authorities because he was a runaway from a group home.

McFadden testified that she smelled alcohol on Antonio's breath. After she was satisfied that Antonio had been driving under the influence, McFadden requested a blood draw. The blood alcohol test results showed Antonio's blood alcohol level was .09. A criminalist testified that based on her background, training and experience, a person with a blood alcohol level of .08 is mentally impaired to operate a vehicle safely.

Curtis Janeway, a captain with the San Bernardino Fire Department, arrived at the scene to help Antonio get out of the Explorer. He stated he was not sure whether Antonio was wearing his seat belt. The investigator for the public defender's officer testified that he saw Antonio and took pictures of him three days after the accident and that at that time, Antonio had an injury to his left hip area at the waist line.

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436.

Dorian Gary testified that the person ejected from the Explorer was her fiancé, Charles Casey. She stated that the last time she saw Casey was at about 8 p.m. on April 24, 2005, when he drove out of the driveway in the Explorer with Antonio in the passenger seat. She testified that she and Casey took Antonio in because he had no place to stay. Antonio was like a son to them. She said she and Casey never let Antonio drive their cars and that she had never seen Antonio doing so. She testified that Casey had warrants out for his arrest.

Antonio testified that after running away from a group home, he was taken in by Casey and Gary, who provided him with lodging, food and clothing and were like parents to him. On the evening of the accident, Casey and Antonio left home in the Explorer to visit Casey's friend. Antonio drank four beers, Casey had more alcohol than he had, and the two smoked marijuana. At about 12 a.m., they went to a liquor store and Antonio waited in the vehicle while Casey talked to a friend. After leaving the liquor store at about 1:10 a.m. and driving for a while without seeing anyone on the street, Casey accelerated to about 55 or 60 miles per hour.

Casey stopped at a red light, and when he saw no one coming, he proceeded on through the intersection even though the light was still red. At some point, Antonio looked back and noticed a police car following them, so he warned Casey that the police were "on" them. Casey responded that he was "not going back to jail," and he accelerated to about 90 or 95 miles per hour. Antonio put on his seat belt.

Suddenly, the front left tire burst and Casey lost control of the Explorer. Antonio told Casey to put on his seat belt and as Casey reached out for his seat belt, the vehicle flipped over. It rolled at least twice, and Antonio blacked out. He did not see Casey ejected from the vehicle and he was in "shock," unaware of what was happening after the Explorer started to roll. When he came to, he saw a firefighter who asked him to take off his seatbelt. He was going to use his right hand to do so but because it was injured, he used his left hand. He testified that the firefighters then pulled him out the window.

Antonio testified that he told Beall he was driving because Casey was about to get married and he did not want him to go back to jail. Antonio believed that "[t]hey'd do

more to him if he went to jail than what they would do to me" and he also thought this incident would not make much difference to him because there was already a warrant out for his arrest. Antonio testified that at the time he said he was driving, he did not know that Casey was dead. He said he had repeatedly asked others what had happened to him but no one told him anything. At juvenile hall, he learned he was there for manslaughter but did not know that Casey was the one who had died. Antonio testified that he had never driven the Explorer, including on the evening in question.

II. DISCUSSION

A. The juvenile court properly denied Antonio's motion to suppress his statements that he was the driver of the vehicle.

Antonio claims that because he was not advised of his *Miranda* rights, the juvenile court erred by denying his motion to suppress his statements that he was the driver of the vehicle. We disagree.

Miranda provides that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." (*Miranda v. Arizona*, *supra*, 384 U.S. at p. 444.) It is settled that " '*Miranda* advisement is required prior to police interrogation "after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." ' " (*People v. Bellomo* (1992) 10 Cal.App.4th 195, 198.)

The scope of our review of claims alleging *Miranda* violations is well established. We must accept the trial court's resolution of disputed facts and inferences and its credibility determinations if they are supported by substantial evidence, although we independently determine whether the interrogation was "custodial." (*People v. Boyer* (1989) 48 Cal.3d 247, 263, 271.) "The existence of custody is determined by an objective test. [Citations.] 'Where no formal arrest takes place, the relevant inquiry . . . "is how a reasonable man in the suspect's position would have understood his situation." ' " (*Ibid.*) " 'Case law has identified a number of objective indicia of custody for *Miranda* purposes, such as (1) whether the suspect has been formally arrested, (2) absent formal arrest, the length of the detention, (3) the location, (4) the ratio of officers to suspects, (5) the

demeanor of the officer, including the nature of the questioning.' " (*People v. Bellomo*, *supra*, 10 Cal.App.4th at pp. 198-199; fn. omitted.)

As noted above, Antonio claims the juvenile court erred by denying his motion to suppress his statements that he was the driver of the vehicle. There are three different series of statements Antonio made that relate to the issue of whether he was driving: (1) a statement to Beall at the scene of the accident that he was the driver; (2) statements to medical personnel at the hospital that he was the driver; and (3) his responses to McFadden's questioning at the hospital, in which he implicitly acknowledged that he was the driver. In his opening brief, Antonio focuses almost exclusively on the issue of whether his responses to McFadden's questions were admissible, and it is therefore unclear whether he also challenges the admissibility of statements he made to Beall and to medical personnel that he was the driver of the vehicle. To the extent he is, in fact, challenging the admission of the latter statements, the challenge lacks merit.

As the first backup officer at the scene, Beall had approached the Explorer only moments after the accident and had not yet spoken to Maass. He did not arrest or detain Antonio and instead simply asked him three routine investigatory questions in order to determine what had occurred and whether Antonio was injured. The two were not at a police station, and other than Beall, the only officer at the scene was Maass, who was standing by Casey about 100 yards away. In response to Beall's question of who was driving, Antonio responded, "I was." Under these circumstances, the juvenile court reasonably concluded that Beall was conducting a "preliminary investigation of a traffic incident" and that his questioning did not constitute "custodial interrogation that would trigger a *Miranda* requirement." Similarly, medical personnel asked Antonio who was driving the vehicle in order to find out how he was injured and to treat him for his injuries, so their questioning also did not constitute custodial interrogation.[2] Thus, the statements

[2] At trial, Antonio posed only a hearsay objection to McFadden's testimony that she heard Antonio tell medical personnel that he was the driver of the vehicle. The juvenile court properly overruled that objection on the ground the testimony was admissible as a party admission. (See Evid. Code, § 1221 [party admission exception to hearsay rule].)

Antonio made to Beall and to medical personnel that he was the driver of the vehicle were properly admitted into evidence.

Turning to Antonio's statements to McFadden, the juvenile court could likewise conclude that they were not the product of custodial interrogation. McFadden went to the hospital to monitor Antonio and did not interfere with medical personnel as they treated him. She was the only officer at the hospital asking questions and the questioning took place there, not at the police station. As she testified, she was simply "following up on some basic investigation" and had not placed Antonio under arrest. Although McFadden stated she would not have allowed Antonio to leave the hospital, Antonio was also there to be treated for his injuries and had not been medically cleared to leave. There was also no evidence that McFadden had told Antonio at any time that he was not free to leave. To the extent Antonio argues that McFadden was not a credible witness and that certain alleged inconsistencies in her testimony "calls into question all her testimony," questions of credibility are for the juvenile court and are entitled to great weight. (*See People v. Whitson* (1998) 17 Cal.4th 229, 248.)

In any event, even if it were error for the juvenile court to have denied Antonio's motion to suppress his statements to McFadden, any error was harmless because he admitted to both Beall and medical personnel that he was the driver of the vehicle, and, as set forth above, those statements were properly admitted into evidence.

B. The juvenile court's findings did not violate the corpus delicti rule.

Antonio argues that because the only evidence that he was driving was his own admission to police and to medical personnel, the juvenile court improperly relied exclusively on his admission to establish the existence of criminal agency as the cause of the injury, in violation of the corpus delicti rule, which provides there must be evidence of the body of the crime itself, apart from the defendant's confessions or admissions. (*See People v. Alvarez* (2002) 27 Cal.4th 1161, 1169.) This claim is without merit.

The purpose of the corpus delicti rule is to ensure that no one will be falsely convicted by his or her untested words alone, of a crime that never occurred. (*People v. Alvarez, supra,* 27 Cal.4th at p. 1169.) The independent proof may be circumstantial and

need only be slight or minimal. (*People v. Jones* (1998) 17 Cal.4th 279, 301.) It "is sufficient if it permits an inference of criminal conduct, even if a noncriminal explanation is also plausible. [Citations.]" (*People v. Alvarez*, *supra*, 27 Cal.4th at p. 1171.) The prosecution need not elicit "independent evidence 'of every physical act constituting an element of an offense,' so long as there is some slight or prima facie showing of injury, loss or harm by a criminal agency. [Citation.] In every case, once the necessary quantum of independent evidence is present, the defendant's extrajudicial statements may then be considered for their full value to strengthen the case on all issues. [Citations.]" (*Ibid*.)

Antonio argues that there must be independent evidence that *he* committed the offenses. This argument is not supported by the law. It is established that "[t]he identity of the person who committed the crime is not part of the corpus delicti, i.e., only the elements of the crime must be proved, and the fact that the defendant was the person who committed it may be established by his or her admission or confession." (1 Witkin, Cal. Criminal Law (3d ed., 2000), Elements, § 48 p. 255; *see also People v. Armitage* (1987) 194 Cal.App.3d 405, 421-422.) In *Armitage*, the defendant who was convicted of drunk boating was seen leaving a bar with the victim, and witnesses later saw a boat being operated in an unsafe and reckless manner with two boisterous men on board. (*People v. Armitage*, *supra*, 194 Cal.App.3d at p. 422.) The court found ample evidence of the corpus delicti, holding that "[s]ince both men were drunk it was immaterial which one of them was actually operating the boat at the time of the accident. In all events, it was being operated in an illegal manner [b]y someone who was drunk. . . . The victim drowned after the accident. Defendant was later observed soaking wet and intoxicated near the river . . . . Consequently, the corpus delicti of the crime of drunk boating causing death was sufficiently shown." (*Id.* at pp. 422-423.)

Similarly, here, there was ample evidence of the corpus delicti, as Antonio and Casey drank alcohol and smoked marijuana together before they began driving down the street at high speeds, swerving off and on the roadway in an erratic manner at approximately 90 miles per hour in a 40 to 45 mile-per-hour zone and running through red lights without slowing down. A death resulted, and Antonio was found inside the vehicle

immediately after the Explorer rolled over. (*See People v. Gapelu* (1989) 216 Cal.App.3d 1006, 1008-1009 [defendant's proximity to the vehicle involved in the collision created a reasonable inference he was the driver and therefore supported a finding of adequate corpus delicti].) The juvenile court did not improperly rely exclusively on Antonio's admission that he was driving, as there was sufficient independent evidence of the corpus delicti to support Antonio's admission.

C. Substantial evidence supported the juvenile court's findings.

Antonio asserts the evidence was insufficient to support a finding that he committed the offenses because the only evidence that he was driving was his admission to police and to medical personnel. This argument fails.

Antonio testified he told others he was driving in order to help Casey, but the juvenile court found this testimony not credible: "And so he's now recanting that story, saying no, that wasn't true [that he was driving], he only said that to cover for his friend. [¶] However, we also have to note that the minor was under the influence. He was intoxicated. He was injured in the accident. And presumably his perception [was] affected by all these occurrences. And his indication that he reflected on why he needed to make up a story to cover for his friend does not have a ring of truth." It was reasonable for the juvenile court to conclude that Antonio was more likely telling the truth shortly after the incident while he was still in a daze, and to the extent the juvenile court found Antonio's testimony at trial not credible, its credibility determinations are entitled to great weight. (*People v. Whitson*, *supra*, 17 Cal.4th at p. 248.)

Further, although Antonio was found on the passenger side of the vehicle, this did not necessarily support a finding that he was in the passenger seat at the time of the accident, as the vehicle had landed on the passenger side after rolling over twice, and none of the individuals who saw Antonio inside the vehicle shortly after the accident recalled seeing him wearing a seat belt. Maass testified that the first time he saw Antonio, Antonio was not sitting in the passenger seat but that his body was in a vertical position lying against the inside of the passenger side wall, which suggests he may have been tossed towards the passenger side when the vehicle rolled over. Antonio testified he was wearing

a seat belt and that he took it off when Janeway instructed him to do so, but this testimony was contradicted by Maass' testimony that Antonio "clearly" did not have a seat belt on the second time he looked at him, which was before Janeway arrived at the scene of the accident. The juvenile court's findings were supported by substantial evidence.

D. The matter should be remanded for the juvenile court to determine whether the wobbler offenses are misdemeanors or felonies.

Welfare and Institutions Code section 702 provides, in part, that if a minor is found to have committed an offense that would, in the case of an adult, be punishable as either a felony or a misdemeanor, the juvenile court shall declare the offense a misdemeanor or felony. In this case, the offenses the juvenile court found Antonio committed are wobbler offenses, but the record does not indicate that the juvenile court explicitly declared whether these offenses were misdemeanors or felonies. Accordingly, as the Attorney General concedes, the matter must be remanded for the juvenile court to make that determination.

III. DISPOSITION

The matter is remanded for the juvenile court to determine whether the offenses Antonio was found to have committed were misdemeanors or felonies. In all other respects, the juvenile court's order is affirmed.

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McGuiness, P. J.

We concur:

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Parrilli, J.

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Pollak, J.