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State v. Alvarez Respondent's Brief Dckt. 48134

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 48134-2020**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR01-19-34705**
	)	
NICOLE S. ALVAREZ,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Nicole S. Alvarez appeals from her conviction for leaving the scene of an injury accident.

Statement Of The Facts And Course Of The Proceedings

The state charged Alvarez with felony leaving the scene of an injury accident, with a persistent violator enhancement, and misdemeanor DUI. (R., pp. 53-54, 80-81.) Prior to trial, the state submitted a requested jury instruction that "[n]o specific degree of injury is required to find the Defendant guilty of Leaving the Scene of an Injury Accident. An injury is defined as any physical harm or damage to a person's body." (Aug., pp. 1-2 (citing State v. Mead, 145 Idaho 378, 179 P.3d 341 (Ct. App. 2008).) The district court gave this instruction. (Aug., p. 15; Tr., p. 51, L. 6 – p. 52, L. 4; p. 330, Ls. 18-22.)

The evidence at trial showed that Alvarez, driving a silver Nissan SUV, struck a grey Chevy Traverse while it was stopped at a traffic light, drove from the scene, and tried to hide from officers. (Tr., p. 177, L. 14 – p. 181, L. 21; p. 263, L. 8 – p. 264, L. 18; p. 288, L. 16 – p. 289, L. 20; p. 290, L. 14 – p. 292, L. 15; p. 305, L. 14 – p. 306, L. 12; p. 309, L. 17 – p. 311, L. 9.) The impact pushed the Traverse "a car length or more" and rendered it "inoperable." (Tr., p. 275, Ls. 18-22; p. 277, L. 17 – p. 278, L. 24; p. 289, L. 18 – p. 290, L. 13; State's Exhibits 7-9.) Alvarez's SUV suffered "pretty severe front end damage." (Tr., p. 182, L. 23 – p. 183, L. 6; p. 185, Ls. 13-17; p. 278, L. 25 – p. 279, L. 15; State's Exhibits 1-4; State's Exhibit 5, 12:30-13:30.)

The driver of the Traverse suffered a whiplash injury causing pain to her neck and head. (Tr., p. 274, L. 14 – p. 275, L. 13; p. 286, L. 22 – p. 288, L. 15; p. 293, L. 14 – p.

295, L. 21.) Another passenger, a girl of ten, also got "hurt," describing that her neck and shoulders "started hurting really bad." (Tr., p. 303, Ls. 7-15; p. 306, L. 13 – p. 307, L. 17.) Another of the passengers, a [redacted] girl, also suffered a neck injury. (Tr., p. 309, Ls. 1-7; p. 311, L. 10 – p. 312, L. 24.)

Alvarez admitted seeing the damage to her car and the other vehicle and that she was aware there could have been injuries. (Tr., p. 182, Ls. 3-22; p. 185, L. 25 – p. 186, L. 3; State's Exhibit 5, 4:17-6:34.) Alvarez was under the influence of methamphetamine. (Tr., p. 186, L. 4 – p. 196, L. 10; p. 217, L. 19 – p. 218, L. 5; p. 228, L. 17 – p. 234, L. 22.)

The jury found Alvarez guilty of felony leaving the scene of an accident and misdemeanor DUI. (R., pp. 98-99.) Alvarez pled guilty to the persistent violator enhancement. (Tr., p. 376, L. 12 – p. 382, L. 16.) The district court imposed a sentence of ten years with three years determinate for leaving the scene of an injury accident, as enhanced, and 180 days for DUI. (R., pp. 107-10.) Alvarez filed a timely notice of appeal. (R., pp. 112-13.)

ISSUES

Alvarez states the issues on appeal as:

I. Was there insufficient evidence to support the jury's verdict finding Ms. Alvarez guilty of leaving the scene of an injury accident?

II. Was the district court's instruction explaining "injury" an erroneous statement of the law which misled the jury and lowered the State's burden of proof?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

I. The evidence shows that Alvarez crashed into another car with sufficient violence to push that car forward a car length or more, doing substantial damage to both cars. Three occupants of the struck car reported pain in their necks and head and shoulder areas as a result of the accident. Has Alvarez failed to show on appeal that the evidence was insufficient to support the jury finding that she knew or had reason to know the crash resulted in injury?

II. Before the district court, Alvarez's trial counsel specifically stated the state's proposed instruction defining "injury" was not an erroneous statement of the law and was not misleading. Should this Court decline to consider Alvarez's unpreserved claim the instruction was an erroneous statement of the law and was misleading?

ARGUMENT

I.
Alvarez Has Failed To Show That The Evidence Presented At Trial Was Insufficient To Support The Jury Finding That She Knew Or Had Reason To Know The Crash Resulted In Injury

A. Introduction

The evidence presented at trial showed that Alvarez fled after plowing into the back of another car while it was stopped at a traffic light, pushing it forward a car length or more, damaging both vehicles extensively, and injuring three of the occupants of the other car. Alvarez argues the evidence was insufficient to support her conviction because "pain, standing alone, is not an injury" and "there was insufficient evidence that Ms. Alvarez knew or had reason to know that the occupants were injured" because the victims testified that they first noticed the pain minutes after the crash. (Appellant's brief, p. 6.) Alvarez's arguments are without merit because the victims' testimony about their pain was substantial evidence they were injured, and the circumstances of the crash, along with other evidence such as Alvarez's confession she was aware of the damage to the cars and that there could have been injuries, is substantial evidence supporting the jury's finding that Alvarez knew or had reason to know the crash resulted in injuries.

B. Standard Of Review

"Appellate review of the sufficiency of the evidence is limited in scope." State v. Anderson, 138 Idaho 359, 363, 63 P.3d 485, 489 (Ct. App. 2003). "A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt." State v. Southwick, 158 Idaho

173, 177, 345 P.3d 232, 236 (Ct. App. 2014). "We will not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence." State v. Mitchell, 146 Idaho 378, 382, 195 P.3d 737, 741 (Ct. App. 2008). "Moreover, we will consider the evidence in the light most favorable to the prosecution." State v. Nuse, 163 Idaho 262, 263, 409 P.3d 842, 843 (Ct. App. 2017).

C. The Evidence Supports The Jury's Verdict

Any motorist involved in an accident "who knows or has reason to know that said accident has resulted in injury" must "[i]mmediately stop the vehicle at the scene of the accident," "[r]emain at the scene of the accident," "[g]ive his name, address," and other information to the other driver, "exhibit his driver's license," and "[r]ender to any person injured in the accident reasonable assistance." I.C. § 18-8007(1). Evidence of any harm or damage to a person's body is sufficient to prove the element of injury. State v. Mead, 145 Idaho 378, 380-81, 179 P.3d 341, 343-44 (Ct. App. 2008). Thus, the knowledge element is met if a defendant either knew or had reason to know that any harm to a person happened as a result of an automobile accident, regardless of how slight the injury was.

Here the evidence showed that three occupants of the car Alvarez plowed into suffered injury to their necks and head or shoulders. (Tr., p. 274, L. 14 – p. 275, L. 13; p. 286, L. 22 – p. 288, L. 15; p. 293, L. 14 – p. 295, L. 21; p. 309, Ls. 1-7; p. 311, L. 10 – p. 312, L. 24.) That Alvarez knew or had reason to know that the occupants had been injured was proved by evidence that she struck the other car while it was stopped at a stoplight with sufficient force to drive it a car's length or more ahead (Tr., p. 289, L. 18 – p. 290, L. 13); Alvarez's SUV suffered "pretty severe front end damage" as a result of the crash (Tr.,

p. 182, L. 23 – p. 183, L. 6; p. 185, Ls. 13-17; p. 278, L. 25 – p. 279, L. 15; State's Exhibits 1-4; State's Exhibit 5, 12:30-13:30); the other car was damaged sufficiently that it was rendered "inoperable" (Tr., p. 275, Ls. 18-22; p. 277, L. 17 – p. 278, L. 24; State's Exhibits 7-9); and Alvarez admitted seeing the damage to both cars and that "she thought there could have been injuries at the crash" (Tr., p. 182, Ls. 3-22; p. 185, L. 25 – p. 186, L. 3; State's Exhibit 5, 4:17-6:34). The damage to Alvarez's vehicle alone—"[t]he front end of the vehicle was pushed back substantially into the frame and the engine compartment" (Tr., p. 183, Ls. 1-6; see State's Exhibits 1-4; Tr., p. 185, Ls. 13-17)—was sufficient for the jury to conclude Alvarez had "reason to know" the occupants of the other vehicle had been injured. Combined with evidence of the nature and violence of the rear-end crash, the damage to both cars, and Alvarez's admission that she thought injuries were possible provided not only sufficient evidence, but compelling evidence.

Alvarez first argues that testimony from the three victims that they suffered pain in their necks and shoulders or head for two or three days as a result of the crash is insufficient to prove the accident resulted in injury. (Appellant's brief, pp. 7-10.) This argument fails because whiplash-type injuries are a natural and reasonable inference based on evidence of pain in the neck, shoulders, and head arising from a rear-end crash. See State v. Sheahan, 139 Idaho 267, 286, 77 P.3d 956, 975 (2003) (Court will not substitute its judgment for that of the jury as to "the reasonable inferences to be drawn from the evidence"). There is no explanation for the pain that three of the passengers in the car Alvarez rear-ended and drove forward a full car length experienced other than that they suffered whiplash injuries. Alvarez even admits that that pain "could be a symptom" of injury. (Appellant's brief, p.

14.) The testimony of three victims that they all suffered the *symptoms* of whiplash injury as a result of the crash is sufficient to support the jury finding that injuries in fact happened.

Alvarez next argues there was insufficient evidence that she knew or had reason to know that the occupants of the other car suffered injury because the victims did not note pain for several minutes after the crash. (Appellant's brief, pp. 10-13.) This argument lacks merit.

First, Alvarez should be estopped from arguing on appeal that her own unlawful conduct resulted in alleged ignorance of the victims' injuries. See Bunn v. Heritage Safe Co., 148 Idaho 760, 763, 229 P.3d 365, 368 (2010) (estoppel exists "to prevent a party from taking an unconscionable advantage of his own wrong while asserting his strict legal rights"). Alvarez was legally required to remain at the scene of the accident *even without any injuries* until she had "fulfilled the requirements of law," I.C. § 49-1301(1), including providing her name and address, her driver's license, proof of registration, and proof of insurance, I.C. § 49-1302(1), and notifying law enforcement of the accident, I.C. § 49-1305(1). Had Alvarez fulfilled her legal duty to remain at the scene and provide the necessary information to the other driver and law enforcement, she could not, as she does on appeal, claim ignorance of the victims' injuries. Alvarez should be estopped from claiming ignorance because of her unlawful conduct. At a minimum the jury could have concluded that Alvarez's flight should not work in her favor and was, instead, additional evidence of her motive to flee the consequences of her actions.

Second, Alvarez's claim of significant time between the accident and the manifestation of pain is based on a reading of the evidence that is favorable to her, rather than favorable to the verdict, and is therefore contrary to the standard employed by this

Court. The evidence shows that the symptom of pain manifested in the driver of the other car shortly after the accident and before the police arrived (Tr., p. 263, L. 8 – p. 264, L. 25; p. 274, L. 16 – p. 275, L. 22; p. 293, L. 14 – p. 294, L. 1[1]), and another of the victims, one of the passengers, testified that her "neck was hurting" after the crash without indicating any delay (Tr., p. 311, L. 10 – p. 312, L. 10). Alvarez's argument that she could not have known about the injuries because, in the stress of the moment, two of the three victims did not immediately notice the pain is based on an improper reading of the evidence in her favor.

Finally, the circumstances surrounding the accident are alone sufficient to show that Alvarez knew or should have known the crash resulted in injuries. As set forth above, Alvarez rear-ended the other car while it was stopped at a stoplight. The crash pushed that car forward at least a car length and rendered it inoperable. Alvarez's own vehicle suffered extensive damage. She admitted to the officer knowing injuries from the crash were possible. Given that even a slight injury falls within the scope of the statute, Mead, 145 Idaho at 380-81, 179 P.3d at 343-44, Alvarez had more than enough reason to know the accident had resulted in injury based on the circumstances alone, much less in conjunction with the other evidence.

Alvarez continues to interpret the evidence in her favor and ignore the evidence supporting the jury's verdict when she points out there was no evidence of her speed or an accident reconstruction. (Appellant's brief, p. 12.) The jury had ample evidence of the

[1] Alvarez claims the driver of the other car noticed pain 20 to 30 minutes after the accident, but her citation is to her counsel's *question*. (Appellant's brief, pp. 9, 12.) The victim answered yes, but also *testified* in response to that question that it was only "a few minutes" before she "realiz[ed] that [she] was hurting." (Tr., p. 299, Ls. 3-10.)

violence of the collision in the form of evidence that the impact of Alvarez's SUV pushed the stopped vehicle forward by a car's length or more. She claims there was no evidence showing she "should have known the accident was of a serious nature" (Appellant's brief, p. 12), but the fact that the front of her own vehicle had been crushed into the engine compartment, folding up her own hood (Tr., p. 182, L. 23 – p. 183, L. 6; p. 185, Ls. 13-17; p. 278, L. 25 – p. 279, L. 15; State's Exhibits 1-4) and her admission she was aware of the damage to the cars and was aware that injuries could have resulted (Tr., p. 182, Ls. 3-22; p. 185, L. 25 – p. 186, L. 3; State's Exhibit 5, 4:17-6:34) was exactly such evidence. Alvarez simply ignores evidence supporting the verdict.

The evidence showed this was a serious accident. Alvarez's characterization of the crash as a "fender bender" (Appellant's brief, pp. 2, 9, 10, 12), is a gross understatement, belied by evidence of the crushed front of Alvarez's SUV (State's Exhibits 1-4) and the nature of the crash itself. Alvarez's argument is based on simply ignoring or minimizing evidence showing the violence of the crash. Application of the correct legal standards, including taking all reasonable inferences in favor of the verdict, shows the lack of merit in Alvarez's argument.

II.
This Court Should Decline To Consider Alvarez's Unpreserved Claim Of Instructional Error

A. Introduction

The state submitted a requested jury instruction that "[n]o specific degree of injury is required to find the Defendant guilty of Leaving the Scene of an Injury Accident. An injury is defined as any physical harm or damage to a person's body." (Aug., pp. 1-2 (citing State v. Mead, 145 Idaho 378, 179 P.3d 341 (Ct. App. 2008).) Alvarez's trial counsel

agreed that the instruction was "an accurate statement of the law," and would not mislead the jury, but objected that it "depart[ed] from the ICJI." (Tr., p. 51, L. 6 – p. 52, L. 4; p. 322, Ls. 3-23.[2]) Alternatively, trial counsel asked that only the second sentence be presented to the jury. (Tr., p. 51, Ls. 19-22.) The district court overruled the objection and gave the instruction. (Aug., p. 15; Tr., p. 330, Ls. 18-22.)

On appeal Alvarez argues "the jury instruction was not an accurate statement of the law, it misled the jury, and it lowered the prosecutor's burden of proof." (Appellant's brief, p. 13.) Alvarez's argument should not be considered because it is not preserved and she has not claimed fundamental error.

B. Standard Of Review

"This Court will not consider issues raised for the first time on appeal." State v. Bodenbach, 165 Idaho 577, 583, 448 P.3d 1005, 1011 (2019).

C. Alvarez's Appellate Argument Is Unpreserved

"No party may assign as error the giving of or failure to give an instruction unless the party objects to the action before the jury retires to consider its verdict. The objection must distinctly state the instruction to which the party objects and the grounds of the objection." I.C.R. 30(b)(4). Parties must make "precise objections" to jury instructions "to preserve the issue for appellate consideration." State v. Sellers, 161 Idaho 469, 475, 387 P.3d 137, 143 (Ct. App. 2016). Failure to comply with I.C.R. 30(b) forfeits any

[2] Some of the objection is misattributed to the prosecutor. (Tr., p. 51, Ls. 9-12.) In context, however, it is clear that the objection was expressed by the defense attorney.

unraised objection to a jury instruction. State v. Godwin, 164 Idaho 903, 924, 436 P.3d 1252, 1273 (2019).[3]

Before the district court, Alvarez did not claim the instruction was an erroneous statement of the law, that it would mislead the jury, or that it would reduce the state's burden of proof. His objections were that (1) the instruction was not in the approved ICJI instructions and, alternatively, (2) that only the second sentence of the instruction, defining injury, be given. (Tr., p. 51, L. 6 – p. 52, L. 4; p. 322, Ls. 3-23.) The only ground for the alternative argument of excluding the first sentence of the instruction was that it was the defense "preference." (Id.) Because trial counsel never asserted that the instruction was an erroneous statement of the law, that it would mislead the jury, or that it reduced the state's burden of proof, these arguments are not preserved for appellate review.

In addition, Alvarez's argument is barred by the invited error rule. That rule "prevent[s] a party who caused or played an important role in prompting a trial court to give or not give an instruction from later challenging that decision on appeal." State v. Blake, 133 Idaho 237, 240, 985 P.2d 117, 120 (1999). Alvarez's argument that the instruction misstates the law and is misleading is directly contrary to his position below (and therefore barred by invited error) and is not preserved for appellate review.

Alvarez's claim giving the instruction defining injury was error should not be considered because it is not preserved. Even if considered, however, it should be rejected. In State v. Mead, 145 Idaho 378, 380, 179 P.3d 341, 343 (Ct. App. 2008), the defendant

[3] A "narrow exception" to the preservation rule "exists for alleged fundamental errors that affect a defendant's constitutional rights." State v. McIntosh, 160 Idaho 1, 7, 368 P.3d 621, 627 (2016). Alvarez, however, has not invoked this exception. (See Appellant's brief, pp. 13-16.)

argued "that the injury suffered in this accident, a scraped toe, is below the level of injury contemplated by the statute, and thus there is no evidence of an injury that would support a conviction." Rejecting that argument, the Court of Appeals held that the "plain meaning" of the term "injury" as included in the leaving the scene of an injury accident statute included "any harm or damage" or "physical damage to a person's body." Id. at 381, 179 P.3d at 344. "[T]he statute proclaims that any knowledge or basis to know of an injury triggers the further requirement of stopping and staying to provide information and aid." Id. Thus, the "minor … degree of injury" in fact suffered by the victim did "not eliminate" the need to stay to provide information and aid. Id. at 382, 179 P.3d at 345. The jury instruction that the state need not prove a "specific degree of injury" but only a "physical harm or damage to a person's body" (Tr., p. 330, Ls. 18-22), based on the holding of Mead, was a correct statement of law.

Alvarez asserts that a specific degree of injury is required under the statute, but cites nothing in the language of the statute even suggesting as much. (Appellant's brief, pp. 14-16.) A driver involved in an accident who leaves the scene without exchanging information and providing assistance is guilty of a felony if he "knows or has reason to know that said accident has resulted in injury to or death of any person." I.C. § 18-8007(1). The argument that the statute includes some injuries but not others is without basis. Mead correctly held that any injury qualifies under the statute, and the district court properly so instructed the jury in this case.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 9th day of June, 2021.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of June, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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KKJ/dd