IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,	B234227
Plaintiff and Respondent,	(Los Angeles County Super. Ct. No. NA088083)
v.	
JUAN GARFIAS,	
Defendant and Appellant.	

APPEAL from an order of the Superior Court of the County of Los Angeles, Gary J. Ferrari, Judge. Affirmed.

Sheila Tuller Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Rama R. Maline, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury found defendant and appellant Juan Garfias (defendant) guilty of the unlawful taking of a vehicle. On appeal, defendant contends that the trial court abused its discretion when it refused to allow defendant to present evidence of third-party culpability.

We hold that the trial court did not abuse its discretion by refusing to allow defendant to question certain witnesses for the purpose of establishing a third-party culpability defense because defendant failed to offer any evidence linking the third-party, either directly or circumstantially, to the actual perpetration of the vehicle theft. We therefore affirm the judgment.

FACTUAL BACKGROUND[1]

A. Prosecution's Case

On February 13, 2011, at approximately 7:00 p.m., Jose Hernandez parked and locked his Toyota minivan in front of his house at 1144 Locust Avenue in Long Beach. In addition to locking the van, Hernandez placed a "lock bar" on the steering wheel "to make [the van] even more secure[]." Hernandez had not given anyone permission to take his van. At approximately 12:45 a.m. the next morning, Hernandez was at home asleep.

At approximately 12:40 a.m. on February 14, 2011, Christian Martinez, Melvys Roa, and Hector Rosas heard loud Mexican music coming from the alley behind their third floor apartment located at 333 Magnolia Avenue in Long Beach. Roa also heard people yelling "bad words." The alley was lighted, and there were cars parked in back of the apartment. All three of the witnesses saw a brown or beige Toyota minivan stop in

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[1]   In addition to being charged with the unlawful taking of a vehicle, defendant was charged with burglary. Because defendant was not convicted on the burglary charge, certain facts relating to that charge are omitted.

the alley. They then saw defendant[2] exit the van dressed in blue jeans and a black sweatshirt. Defendant went to the cars parked near the alley and tried opening their doors. In response to defendant's actions, Rosas called 911. When defendant came to a Honda with plastic covering the rear window, he punched through the plastic and entered the car. Defendant took the Honda's stereo, a pair of jumper cables, and some papers from the glove compartment. Martinez and Roa heard defendant yell something to the effect of "There is a god and he sees all. These damn yahoos, they are going to pay." Then someone inside the van yelled, "police."[3] Defendant returned to the van with the items he had taken from the Honda and drove down the alley. As the van exited the alley, a police car arrived traveling in the opposite direction.

On February 14, 2011, at around 1:00 a.m., Long Beach Police Officer Derrick Ernest, while working on patrol, responded to 333 Magnolia Avenue in Long Beach to assist other officers who were en route to an auto burglary that had just occurred. As he approached the scene, he came to an alley where the reporting party stated the crime was occurring. Before the officer turned into the alley, he waited for a Toyota minivan to turn out of the alley northbound on Magnolia. He took note of who was driving the van and its license number, and proceeded into the alley to investigate whether a crime had occurred. Officer Ernest identified defendant as the person driving the van, and he did not see anyone in the van with defendant.

In the alley, Officer Ernest saw two or three people "hanging out" of a third story window pointing to a red Honda and saying that it had just been broken into and that the perpetrator had just left the alley in a van. Officer Ernest then radioed information about the suspect, the van, and the license plate number to other responding units. After he confirmed that a crime had occurred at the scene, Officer Ernest went back to his patrol car and began to drive around the area in an effort to locate the suspect. After he

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[2]   Martinez, Roa, and Rosas identified defendant at trial as the man they saw in the alley that morning.

[3]   Martinez and Roa testified that they saw another person in the van with defendant.

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searched the area, another officer radioed that the suspect vehicle had been located. Officer Ernest proceeded to the location of the suspect vehicle and learned that the suspect exited the vehicle and ran between two apartment complexes. Officer Ernest assisted other officers in setting up a perimeter around the complexes and, with the aid of a police dog, officers began searching the two properties.

On February 14, 2011, at approximately 12:45 a.m., Officer James Richardson was assisting on an auto burglary call. He responded to the area of the burglary and began to search for the suspect. After a few minutes, he located the suspect van driving down 9th Street less than a mile from the scene of the auto burglary. Officer Richardson followed the van south on Pacific Avenue and then observed it turn into an alley. Believing that the driver was preparing to flee, Officer Richardson illuminated his patrol car emergency lights and sounded the siren. The van stopped suddenly, and defendant emerged from the van and began to run. As defendant ran past the van, items "flew out" of his pockets that looked like money and beer. As Officer Richardson chased defendant, he yelled "Police, stop," but defendant kept running. Farther down the alley, defendant dropped "a bunch of CD's . . . ." Defendant then turned on 9th Street, causing Officer Richardson to lose sight of him. Another officer showed Officer Richardson the location to which defendant ran, and he set up a perimeter on the radio for other responding units. While Officer Richardson was searching for defendant, two other officers radioed that they had located defendant hiding in a trash can. Investigating officers recovered CDs from the alley where defendant dropped them, more CDs in the van, and a car stereo with the wires "hanging out" in the van.

Officer Ratha Bun was working by himself on February 14, 2011, at about 1:00 a.m. when he was called to assist in establishing a perimeter in the area of 9th Street and Pacific Avenue. He located defendant hiding in a trash can. Other officers ordered defendant out of the trash can with the help of a K-9 dog. Defendant crawled out of the can with dirt on his face and body. Sometime after defendant was detained, Martinez, Roa, and Rosas were taken to his location where they each identified him as the man they saw in the alley breaking into the Honda.

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At about 3:00 a.m. that morning, police officers knocked on Hernandez's door. An officer asked him if he owned a van and Hernandez told the officer that he did. The officers inquired where the van was parked, and Hernandez went outside and discovered his van was missing. Hernandez told the officer that he did not loan the van to anyone and that it may have been stolen. The officer told Hernandez "not to worry. I think we already have it." The officer took Hernandez to Pacific Avenue and Cedar Street where he saw his van. He noticed the passenger door of his van was "banged in," the ignition had been "punched," and the "lock bar" on his steering wheel had been cut. Hernandez had never seen defendant before and did not give him permission to drive his van.

B.   Defense Case

Officer Ray Panek was responsible for conducting "field show-ups" in this case. He did not speak Spanish, but Officer Orozco did. When Officer Panek conducted the field show-up with Martinez, he seemed to understand English well. Officer Panek read the Department's field show-up admonition verbatim to Martinez in English who seemed to understand it. Officer Panek did not ask Officer Orozco to translate the admonition for Martinez. Officer Panek did not tell Martinez that the police had apprehended the man who was stealing.

Officer Panek also conducted the field show-up with Roa. She appeared to understand English and Officer Panek read the field show-up admonition in English to her verbatim. Officer Panek did not ask Officer Orozco to read the admonition to Roa in Spanish.

Detective Joseph Starbird was the investigating detective in this case. Detective Starbird conducted telephone interviews of Roa, Martinez, and Rosas. When Roa told the detective that there were two persons in the van, that was the first information he received that two persons could have been involved in the incident in question. All three witnesses told the detective during the telephone interviews that the person who burglarized the Honda returned to the van and entered it from the passenger side.

Defendant's counsel played the 911 tape for the jury.

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PROCEDURAL BACKGROUND

In an information, the Los Angeles County District Attorney charged defendant in count 1 with unlawful driving or taking of a vehicle in violation of Vehicle Code section 10851, subdivision (a) and in count 2 with second degree burglary in violation of Penal Code section 459.[4] The District Attorney alleged as to counts 1 and 2 that defendant had suffered a prior conviction of a serious or violent juvenile adjudication within the meaning of sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (b) through (i). The District Attorney further alleged as to counts 1 and 2 that defendant had suffered three prior convictions for which prison terms were served within the meaning of section 667.5, subdivision (b). Defendant pleaded not guilty and denied the special allegations.

Following trial, the jury found defendant guilty on count 1, but could not reach a verdict on count 2, which the trial court thereafter dismissed. Prior to sentencing, defendant admitted two of the three convictions for which prison terms were served and the trial court struck the third.[5] At the sentencing hearing, the trial court sentenced defendant to a term of five years, comprised of an upper term of three years and two additional consecutive terms of one year each for the two prior prison terms.

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[4]   All further statutory references are to the Penal Code unless otherwise indicated.

[5]   The Attorney General notes that the record does not reflect a disposition on the prior strike allegation that was based on a juvenile adjudication for violation of section 288, subdivision (a). The Attorney General concedes, however, that a juvenile adjudication for violation of section 288, subdivision (a) does not qualify as a strike. (§ 667, subd. (d)(3)(B); Welf. & Institutions Code, § 707, subdivision (b).)

DISCUSSION

A.   Background

After Hernandez testified, the following exchange took place between the trial court and defendant's trial counsel: "[Defense Counsel]: I want to take a picture of [Hernandez] and show it to the next three witnesses. [Hernandez], I want to take a picture of [Hernandez] and show it to the next three witnesses. He's about my client's height, he's right around my client's weight and in the dark, wow-- [¶] The Court: What's the relevance? He was home asleep? [¶] [Defense Counsel]: No. He says he was at home asleep or he was driving around drunk crashing into things and stealing stuff. But I want to show his picture to the next—to the next witnesses that say they saw someone break in the car and saw someone drive away in the van. If they pick him out, then, you know, so I would like to do that. [¶] The Court: All right. Well, that request is denied, at least at this point. [¶] [Defense Counsel]: May we have that witness subject to recall. [¶] The Court: They are all subject to recall."

B.   Standard of Review

Defendant's challenge to the trial court's exclusion of his proferred third-party culpability evidence is reviewed under an abuse of discretion standard. "The abuse of discretion standard of review applies to any ruling by a trial court on the admissibility of evidence. (*People v. Rowland* (1992) 4 Cal.4th 238, 264 [14 Cal.Rptr.2d 377, 841 P.2d 897].) . . . Under this standard, a trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10 [82 Cal.Rptr.2d 413, 971 P.2d 618].)" (*People v. Guerrra* (2006) 37 Cal.4th 1067, 1113.)

C.   Legal Principles

The legal principles relating to the admission of third-party culpability evidence are well established. "In *People v. Hall* (1986) 41 Cal.3d 826 [226 Cal.Rptr. 112, 718 P.2d 99], this court articulated the standard California courts apply in determining the admissibility of third party culpability evidence. We said: 'To be admissible, the third-party evidence need not show "substantial proof of a probability" that the third person committed the act; it need only be capable of raising a reasonable doubt of defendant's guilt. At the same time, we do not require that any evidence, however remote, must be admitted to show a third party's possible culpability. As this court observed in [*People v.*] *Mendez* [(1924)] 193 Cal. 39, 51 [223 P. 65]], evidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime.' (*Id.* at p. 833.)" (*People v. Vines* (2011) 51 Cal.4th 830, 860.)

D.   Analysis

Defendant contends that he should have been allowed to photograph Hernandez, show that photograph to eyewitnesses Martinez, Roa, and Rosas, and question them concerning whether Hernandez could have been the man they saw in the alley the morning of the auto burglary. According to defendant, he and Hernandez had a similar physical appearance, and Hernandez owned the van used in the burglary and lived less than a mile from where the van was located by police. Based on those facts, defendant argues that he should have been allowed to show that Hernandez may have been responsible for the vehicle taking.

Defendant's premise is that Hernandez had the opportunity to take and use the van on the morning in question. But there was no evidence before the trial court at the time it made its ruling that directly or circumstantially linked Hernandez to the vehicle at the time the eyewitnesses saw it in the alley behind their apartment. Nor was there anything in the record to suggest that Hernandez left his home on the morning of the incident, and

he testified that he was at home asleep and had never seen defendant before the trial. In addition, Hernandez testified that the van's ignition had been punched and the lock bar on the steering wheel had been cut off. That evidence strongly suggested that Hernandez did not take his own van, and no other evidence placed him at the scene of the incident at the time it occurred or any other time. Therefore, defendant's assertion that Hernandez could have been involved was based on speculation, not direct or circumstantial evidence of involvement. Based on the lack of required evidence linking Hernandez in some manner to the perpetration of the charged crimes, the trial court did not abuse its discretion by refusing defendant's request to use Hernandez's photograph to question the eyewitnesses.

DISPOSITION

The judgment of conviction is affirmed.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.