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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PRINCE MALCOLM JONES, Defendant and Appellant.	B234466 (Los Angeles County Super. Ct. No. YA076238)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Affirmed.

Jeanine G. Strong, 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, Assistant Attorney General, Linda C. Johnson and Toni R. Johns Estaville, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Prince Malcolm Jones appeals his convictions for unlawfully driving or taking a vehicle and receiving stolen property. The trial court sentenced Jones to a term of six years four months in prison. Jones contends the trial court erred by admitting evidence of his prior misconduct. Discerning no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

a. *People's evidence.*

(i) *The crimes.*

In September 2009, 85-year-old Manabu Sakamoto owned a 2006 Toyota Avalon automobile. Sakamoto kept the certificate of title (commonly known as a "pink slip") in a box underneath his dresser, along with other important documents and currency.

On the evening of September 25, 2009, Sakamoto parked the Avalon in the driveway of his Gardena home, and locked the doors. Sakamoto took the car keys into the house. At 6:00 a.m. the next day, Sakamoto discovered the Avalon was gone. His wallet, which contained his credit cards and driver's license, his car keys, and his checkbook, which had been inside his home, were missing, as was his document box. There were no signs of forced entry.

Later that day, at approximately 4:00 p.m., Sakamoto observed that his car had been returned to his driveway, but the keys were still missing and the car was locked. Sakamoto had the car towed to a car dealership, where it was re-keyed. On September 28, 2009, Sakamoto retrieved the re-keyed car from the dealership, parked it in the driveway, and locked the doors.

At approximately 4:00 a.m. on September 29, 2009, Jones had the Avalon towed from Sakamoto's driveway.

Between September 28 and October 1, 2009, Jones twice attempted to register the Avalon to himself at the Department of Motor Vehicles (DMV), using the stolen pink slip. During that process DMV authorities learned that that car had been reported stolen, and summoned a California Highway Patrol (CHP) officer. Jones told the CHP officer

that Jose Martinez, a family friend, was brokering the sale and was in possession of the car, that the two men were purchasing it together, and that he had paid Martinez $3,000 for it. When the CHP officer asked how to contact Martinez, Jones gave a variety of excuses for why he could not do so.

On October 2, 2009, officers located Sakamoto's Avalon parked near Jones's residence. Sakamoto's driver's license and Jones's debit card were found in a shoebox in the car. Police discovered Sakamoto's car keys, interim driver's license, checkbook, credit cards, wallet, and DMV registration documents, in Jones's house.

Sakamoto had never met Jones or Martinez, had not given them permission to take the car, and had not sold them the car. Sakamoto had not signed the pink slip, but it contained a signature that purported to be his. The Avalon was valued at between approximately $15,000 and $18,000. Sakamoto admitted he occasionally forgot things.

(ii) *Prior crimes evidence.*

A. *Michele Penn.*

On May 22, 2003, at approximately 6:00 a.m., Michele Penn discovered that her car, a silver Saturn, was missing from her driveway, where it had been parked the night before. Her purse, which contained her car keys and wallet, was missing from her kitchen. The sliding glass door into her residence was open. Approximately one week later, a deputy sheriff observed Jones driving the Saturn, and arrested him.

B. *Jenelle Hernandez.*

On August 13, 2002, Jenelle Hernandez's car, a Toyota Tercel, was stolen from a mobile home park where her husband had parked it while visiting a relative. Hernandez spotted Jones driving the car the next day.

b. *Defense evidence.*

Jones testified in his own behalf, as follows. His friend Jose Martinez knew "a guy" who was selling a Toyota Avalon for $6,000. The men agreed that Jones would pay Martinez $3,000, and Martinez would pay the remaining $3,000. Martinez would keep his name on the registration until Jones paid him the remaining $3,000. Martinez produced two sets of keys to the car and the pink slip. Jones told Martinez that he wanted

to see the owner personally sign the pink slip. On September 26, 2009, Martinez drove Sakamoto to a bowling alley, where Jones met with them. Sakamoto signed the pink slip. On September 26 and 27, Jones visited the DMV and attempted to register the car, but was unable to do so because the pink slip was missing signatures. He paid registration fees. On September 28, Jones paid Martinez the $3,000. He and Martinez executed a bill of sale. Jones's mother purchased insurance for the car.

At approximately 3:00 a.m. on September 28, 2009, Martinez telephoned Jones to tell him the Avalon would not start, and asked if he could use Jones's keys. Martinez picked Jones up and they travelled to Sakamoto's residence, where the car was parked. Jones's key did not work either, so Jones had the car towed to his home.

Martinez had left paperwork and other items in the Avalon, and Jones's girlfriend, Karla Torres, brought them into the house she and Jones sometimes shared. Jones had not known these items, which included Sakamoto's property, were in the car. Jones did not provide Martinez's contact information to police because he did not want to betray a friend or put his family in danger of retaliation.

A defense handwriting expert could not determine whether the signature on the pink slip was Sakamoto's.

Jones admitted committing the prior automobile thefts and residential burglary in order to support a drug habit. He had pleaded guilty and had been sentenced to eight years.[1]

c. *People's rebuttal.*

Sakamoto's fiancé, Chiyeko Suo, testified that Sakamoto did "[n]ot really" have problems with his memory, and was "really responsible for important things." Sakamoto had never mentioned any plan to sell his car.

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[1] Jones was also impeached with his prior convictions for possession of a controlled substance for sale and passing counterfeit money.

2. *Procedure.*

Trial was by jury. Jones was convicted of unlawfully driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) and two counts of receiving stolen property (Pen. Code, § 496, subd. (a)).[2] The jury acquitted him of receiving a stolen vehicle (count 2).[3] Jones admitted suffering a prior "strike" conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and serving a prior prison term within the meaning of section 667.5, subdivision (b). The trial court sentenced Jones to a term of six years four months. It imposed a restitution fine, a suspended parole restitution fine, criminal conviction assessments, court security fees, and a crime prevention fee, and ordered Jones to pay victim restitution. Jones appeals.

DISCUSSION

The trial court did not err by admitting evidence of Jones's prior vehicle thefts.

Prior to trial, and over Jones's objection, the trial court ruled the prior crimes evidence regarding the Penn and Hernandez thefts was admissible. It concluded the evidence was relevant and admissible under Evidence Code section 1101, subdivision (b), to show intent, preparation, plan, knowledge, or absence of mistake, and was more probative than prejudicial. Jones contends this was an abuse of discretion. We disagree.

Evidence that a defendant committed misconduct other than that currently charged is generally inadmissible to prove conduct on a specified occasion, or to show the defendant has a bad character or a disposition to commit the charged crime. (Evid. Code, § 1101, subd. (a); *People v. Kelly* (2007) 42 Cal.4th 763, 782; *People v. Rogers* (2009) 46 Cal.4th 1136, 1165; *People v. Kipp* (1998) 18 Cal.4th 349, 369.) However, such evidence is admissible if it is relevant to prove, among other things, motive, opportunity, intent, knowledge, preparation, identity, or the existence of a common design or plan. (Evid. Code, § 1101, subd. (b); *People v. Carter* (2005) 36 Cal.4th 1114, 1147; *People v.*

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2 All further undesignated statutory references are to the Penal Code.

3 The jury was instructed that Jones could be convicted of unlawfully driving or taking a vehicle, or receiving a stolen vehicle, but not both.

Ewoldt (1994) 7 Cal.4th 380, 400.) When reviewing the admission of evidence of other offenses, a court must consider: (1) the materiality of the fact to be proved or disproved, (2) the probative value of the other crimes evidence to prove or disprove the fact, and (3) the existence of any rule or policy requiring exclusion even if the evidence is relevant. (*People v. Fuiava* (2012) 53 Cal.4th 622, 667.)

The least degree of similarity between the crimes is needed to prove intent. (*People v. Thomas* (2011) 52 Cal.4th 336, 355; *People v. Kelly*, *supra*, 42 Cal.4th at p. 783; *People v. Ewoldt*, *supra*, 7 Cal.4th at p. 402.) "In order to be admissible to prove intent, the uncharged misconduct must be sufficiently similar to support the inference that the defendant ' "probably harbor[ed] the same intent in each instance." [Citations.]' [Citation.]" (*Ewoldt*, at p. 402.) The recurrence of a similar result tends to establish criminal intent. (*Kelly*, at p. 783.)

Even if other crimes evidence is admissible under Evidence Code section 1101, subdivision (b), it may be excludable under Evidence Code section 352 if its probative value is substantially outweighed by concerns of undue prejudice, confusion, or undue consumption of time. (*People v. Scott* (2011) 52 Cal.4th 452, 490-491; *People v. Thomas, supra*, 52 Cal.4th at p. 354.) Because evidence relating to uncharged misconduct may be highly prejudicial, its admission requires careful analysis. (*People v. Ewoldt*, *supra*, 7 Cal.4th at p. 404.) " ' " 'Prejudice' as contemplated by [Evidence Code] section 352 is not so sweeping as to include any evidence the opponent finds inconvenient. Evidence is not prejudicial, as that term is used in a section 352 context, merely because it undermines the opponent's position or shores up that of the proponent.' " ' " (*Scott*, at p. 490.) The prejudice referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. (*Id*. at p. 491.) " '[P]rejudicial' is not synonymous with 'damaging.' " (*Scott*, at p. 491.)

We review the trial court's rulings under Evidence Code sections 1101 and 352 for abuse of discretion. (*People v. Fuiava*, *supra*, 53 Cal.4th at pp. 667-668; *People v. Scott, supra*, 52 Cal.4th at p. 491; *People v. Thomas, supra*, 52 Cal.4th at pp. 354-355.)

We discern no abuse of discretion here. The challenged evidence was highly probative to establish Jones's intent and the absence of mistake. To establish a violation of Vehicle Code section 10851, subdivision (a), the prosecution was required to prove that Jones drove or took a vehicle belonging to another person, without the owner's consent, with the specific intent to permanently or temporarily deprive the owner of title or possession. (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574; see also *People v. Garza* (2005) 35 Cal.4th 866, 875-876.) Jones's defense was that he was either an innocent dupe who had been defrauded by Martinez, or that Sakamoto had actually sold him and Martinez the car but simply forgot. Evidence that Jones previously stole cars was therefore highly relevant to rebut his defense and prove his intent to steal. (See *People v. Spector* (2011) 194 Cal.App.4th 1335, 1381 [evidence of uncharged crimes is admissible where both charged and uncharged crimes are " 'explainable as a result of the same motive' " (italics omitted)].) It has long been recognized that " ' " ' "if a person acts similarly in similar situations, he probably harbors the same intent in each instance" [citations], and that such prior conduct may be relevant circumstantial evidence of the actor's most recent intent. The inference to be drawn is not that the actor is *disposed* to commit such acts; instead, the inference to be drawn is that, in light of the first event, the actor, at the time of the second event, must have had the intent attributed to him by the prosecution.' " [Citation.]' " (*People v. Thomas, supra*, 52 Cal.4th at pp. 355-356.)

The Penn theft shared features in common with the charged offense sufficient to support the inference that in each incident, Jones intended to steal the car. The evidence showed Jones took Penn's car from her driveway in the middle of the night, after entering her home and taking her keys and purse. He also took Hernandez's car from a residence. Similarly, Jones took Sakamoto's car from his driveway in the middle of the night, after entering Sakamoto's home and taking his keys, wallet, and documents. Moreover, the fact that the evidence of the prior incidents had an independent source increased its probative value. (*People v. Balcom* (1994) 7 Cal.4th 414, 427; *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

Jones argues the incidents were not similar. He urges that in the prior thefts, he was attempting to steal, not buy, a car; in the charged crimes, he attempted to register the car with the DMV and he did not behave as if he was guilty, whereas in the prior crimes he was caught when fleeing; and in the Penn matter he was charged with burglary, as well as auto theft. However, to prove intent, the uncharged misconduct need not be identical to the charged crimes; it must simply be similar enough to allow the inference that the defendant harbored the same intent in each instance. (*People v. Ewoldt, supra*, 7 Cal.4th at p. 402.) That standard was satisfied here.

Nor was the evidence unduly prejudicial under Evidence Code section 352. The evidence of the prior thefts was not inflammatory; indeed, because the victim in the charged crime was a vulnerable, disabled, elderly man, the jury was likely to find evidence of the Penn and Hernandez crimes less troubling than the circumstances of the charged crime, decreasing the potential for prejudice. (See *People v. Eubanks* (2011) 53 Cal.4th 110, 144 [the potential for prejudice is decreased when testimony describing the defendant's uncharged acts is no stronger and no more inflammatory than the testimony concerning the charged offenses].) The jury was informed that Jones had been convicted and punished for the prior thefts, likewise mitigating any possible prejudice. (*People v. Balcom*, *supra*, 7 Cal.4th at p. 427 [jury "was not tempted to convict defendant of the charged offenses, regardless of his guilt, in order to assure that he would be punished for the uncharged offenses, because the jury was aware he had been sentenced to a substantial prison term for the uncharged offenses"].) The evidence related to the prior crimes was brief and uncomplicated, consuming fewer than 25 pages of a Reporter's Transcript exceeding 1,000 pages, and was unlikely to confuse the jury. (See generally *People v. Frazier* (2001) 89 Cal.App.4th 30, 42.) Finally, the trial court gave a limiting instruction, further mitigating any possibility of prejudice. (*People v. Lewis* (2001) 25 Cal.4th 610, 637.)

The prior crimes evidence was somewhat remote in time, occurring approximately six to seven years before the instant offenses. But this circumstance did not require exclusion, given that for at least a substantial portion of the intervening time Jones was incarcerated. (See *People v. Steele* (2002) 27 Cal.4th 1230, 1245; *People v. Jones* (2012) 54 Cal.4th 1, 51 [six-year gap between prior and charged offense did not make the prior too remote, where defendant was incarcerated for all but 18 months of that period].) In sum, the trial court did not abuse its discretion by admitting evidence of the prior crimes.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.