

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and  
Respondent,

v.

ARMANDO ESTRELLA,

Defendant and  
Appellant.

B285736

(Los Angeles County  
Super. Ct. No. LA086049)

APPEAL from judgment of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Affirmed.

Myra Sun, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews,

Supervising Deputy Attorney General, Robert C. Schneider,  
Deputy Attorney General, for Plaintiff and Respondent.

---

The jury found defendant and appellant Armando Estrella guilty of elder abuse (Pen. Code, § 368, subd. (b)(1) [count 1]), and battery causing serious bodily injury (*id.*, § 243, subd. (d) [count 2]). It found true the special allegation that Estrella inflicted great bodily injury on a person 70 years of age or older in the commission of count 1. (*Id.*, § 12022.7, subd. (c).)

Estrella was sentenced to the upper term of four years in prison in count 1. The trial court imposed a concurrent upper term sentence of four years in count 2, which it stayed pursuant to Penal Code section 654. The court struck the great bodily injury enhancement in the interests of justice.

Estrella's sole contention on appeal is that the trial court erred by admitting evidence of his prior conviction for elder abuse.

We affirm the judgment.

## **FACTS**

### **Prosecution**

On May 12, 2017, Estrella and the victim, Shahin P., both lived at the Fine Gold Manor assisted living facility. Estrella was 83 years old and Shahin was 73 years old.

Shahin was asleep in his bed when he was awakened by someone kicking, slapping, and punching him. He became dizzy and disoriented, and lost consciousness. He sustained a black eye and damage to his teeth requiring dental work.

Anita Guzman Espinoza was a caregiver at Fine Gold Manor. During her regular shifts, Espinoza provided care to Estrella and Shahin. Shahin required assistance to get into his wheel chair, to bathe, and to use the toilet. He was unable to walk. Estrella was able to move himself from his bed to his wheelchair. He bathed himself except for his back. On the date of the incident, when Espinoza checked Shahin between 3:00 p.m. and 4:00 p.m., he was not injured. When she checked him at 5:00 p.m., Shahin had injuries.

Photographs and medical reports depicting Shahin's facial injuries were admitted into evidence. Shahin's dental reports indicated that he was treated for injuries to his mouth and teeth. His medical reports indicated he suffered a subdural hematoma, or bleeding around his brain.

Los Angeles Police Department Detective Maria Davalos testified that Estrella was convicted of felony elder abuse in 2003.

## **Defense**

Shahin sat behind Estrella in the dining room. He became upset with Estrella for his "loud malicious cough[s]" during meals, which he described as sounding like "gargling mucus and phlegm." When Estrella asked Shahin to cover

his mouth, Shahin said, “F you” and told Estrella to “shut up.” Estrella was angry at this response. He asked the facility manager to speak with Shahin, but she said she would not “scold everybody” for coughing.

On May 12th, Estrella was wheeling down the hallway in his wheelchair and noticed that Shahin’s door was slightly open. Shahin was sitting on the edge of the bed. Without being invited, Estrella wheeled himself into the room stopping about two feet from Shahin. He did not intend to assault Shahin.

Shahin took a wild swing at Estrella but missed. He called Estrella a “son of a bitch” and told Estrella he was going to “kill him.” Estrella backed away initially, but then swung back at Shahin in self-defense. He thought Shahin might follow through and throw more punches. Estrella hit Shahin in the face and Shahin swung back. When Estrella noticed that Shahin had a bloody nose, he went back to his own room. Estrella was angry and had blood on his clothes.

Shahin hit Estrella many times; a lens in one of Estrella’s eyes was knocked out of alignment. His mouth and nose were bleeding. When he saw the doctor after the incident, his hand was not red, swollen, or bruised. His hand did not need to be immobilized, and did not require surgery. Estrella claimed it was physically impossible for him to kick anyone.

Estrella told the police he wanted to talk to Shahin about a problem they were having. He avoided Shahin’s first punch, but Shahin hit him several times.

In 2003, Estrella and his older sister had an altercation over the distribution of their mother's property after she died. His sister "took a slap" at him. Estrella admitted, "me and my anger, I slapped back." Estrella insisted the subsequent conviction was a misdemeanor, but the court records indicated he was convicted of a felony.

## **Rebuttal**

Julio Martinez worked as a receptionist and activities director at Fine Gold Manor. He knew both Estrella and Shahin. Estrella was able to wheel himself to meals. Shahin had to be lifted from his bed to a wheelchair. He also could not sit up by himself.

On the day of the incident, Martinez found Shahin lying in bed with "damage on his face." Shahin was stuttering and without being asked said that someone had hit him. Shahin appeared upset and shaken.

The residents' doors close automatically for safety reasons. Shahin's door was closed on the day of the incident. If it had fallen open, the staff would have closed it immediately in compliance with fire regulations. After seeing Shahin's injuries, Martinez saw Estrella later in the day and did not observe that Estrella had any visible injuries.

Los Angeles Police Department officer Carl Le Patrie Greene responded to Fine Gold Manor and saw Estrella. Estrella showed no signs of distress or injury and did not

complain about any injuries. He was acting very casual and laughed. He was unapologetic about the situation. Estrella told the officer that Shahin was “dirty” and “filthy.” Estrella also said he had entered Shahin’s room to settle some problems he had with Shahin. The officer also spoke with Shahin. His nose was bleeding and swollen and his left eye socket was swollen. Shahin appeared to be in pain as he spoke.

## DISCUSSION

Estrella contends the trial court abused its discretion under Evidence Code sections 1109, subdivision (a)(2), and 352 by admitting evidence of Estrella’s 2003 conviction for elder abuse.<sup>1</sup> We disagree.

### Law

Evidence of a person’s character or predisposition to act in a certain way is generally inadmissible to prove that the person acted in conformance with that character trait on a given occasion. (§ 1101, subd. (a); *People v. Villatoro* (2012) 54 Cal.4th 1152, 1159.) “Such evidence “is [deemed] objectionable, not because it has no appreciable probative value, *but because it has too much.*” . . . [Citations.]’ [Citations.]” (*People v. Falsetta* (1999) 21 Cal.4th 903, 915

---

<sup>1</sup> All future statutory references are to the Evidence Code unless otherwise indicated.

(*Falsetta*.) Despite the general prohibition against the use of character evidence, Section 1109 permits proof of a defendant's character in the form of evidence of a defendant's commission "of other abuse of an elder or dependent person . . . if the evidence is not inadmissible pursuant to Section 352." (§ 1109, subd. (a)(2).) "Abuse of an elder or dependent person' means physical or sexual abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that results in physical harm, pain, or mental suffering, the deprivation of care by a caregiver, or other deprivation by a custodian or provider of goods or services that are necessary to avoid physical harm or mental suffering." (§ 1109, subd. (d)(1).)

Section 352 provides: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (§ 352.) "The principal factor affecting the probative value of an uncharged act is its similarity to the charged offense. Other factors affecting the probative value include the extent to which the source of the evidence is independent of the charged offense, and the amount of time between uncharged acts and the charged offense. The factors affecting the prejudicial effect of uncharged acts include whether the uncharged acts resulted in criminal convictions and whether the evidence of uncharged acts is stronger or more inflammatory than the

evidence of the charged offenses.” (*People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

Section 1109 imposes an additional requirement for admission of acts of elder abuse that occurred more than 10 years prior to the charged offense: that “admission of [such] evidence is in the interests of justice.” (§ 1109, subd. (e).) “Subdivision (e) establishes a presumption that conduct more than ten years prior to the current offense is inadmissible. . . . [I]t sets a threshold of presumed inadmissibility, not the outer limit of admissibility.” (*People v. Johnson* (2010) 185 Cal.App.4th 520, 539 (*Johnson*).) The subdivision requires “a more rigorous standard of admissibility for remote priors,” but the “interests of justice” analysis does not “necessitate[] an inquiry different in kind from that involved in a determination under section 352;” rather, it simply calls for the same analysis to be exercised with a higher degree of scrutiny. (*Ibid.*) The probative value of the evidence must weigh more heavily than it does under a section 352 analysis. (*Ibid.*) “To the extent a higher degree of scrutiny is called for, it is the conclusion drawn from the balancing test, not the process itself, that must change under subdivision (e). Under subdivision (a)(1) and section 352, evidence may be excluded only where its probative value is ‘substantially outweighed’ by its prejudicial effect. Though it reversed the presumption in subdivision (e), we believe the Legislature intended to allow admission of evidence whose probative value weighs more heavily on those same scales. [¶] Thus, the ‘interest of



justice’ exception is met where the trial court engages in a balancing of factors for and against admission under section 352 and concludes . . . that the evidence was ‘more probative than prejudicial.’” (*Id.* at pp. 539–540.)

We review the trial court’s determination that a prior act of elder abuse occurring more than 10 years before the charged offense is admissible in the interests of justice for abuse of discretion. (*Johnson, supra*, 185 Cal.App.4th at p. 539.) “‘Trial courts enjoy “broad discretion” in deciding whether the probability of a substantial danger of prejudice substantially outweighs probative value. [Citations.] A trial court’s exercise of discretion “will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.”’ (*People v. Holford* (2012) 203 Cal.App.4th 155, 167–168.)” (*People v. Fruits* (2016) 247 Cal.App.4th 188, 202 (*Fruits*); see also *Johnson, supra*, at p. 539 [courts have “substantial discretion in setting an ‘interest of justice’ standard”].) We will affirm the trial court’s evidentiary ruling if it is correct on any theory of law applicable to the case, even if for reasons different than those expressly stated by the trial court. (*Fruits, supra*, at p. 205.)

## **Proceedings**

Prior to jury selection the trial court noted that it had been having off-record conversations with the parties and

would tentatively rule on the issue of whether evidence of Estrella's 2003 conviction for elder abuse would be admitted. The court stated the ruling could change "if the record is materially different from that, which I'm basing my ruling upon, which you told me about before trial started." It ruled as follows:

"Both the admissibility under 1109 and 1108 [sic],<sup>2</sup> of course, have to be reviewed. The last analysis under the lengths [sic] of section 352 -- which is always true of anything -- but as far as the 1109 evidence is concerned, the court finds it admissible. Parenthetical aside, under 352, the fact that the people are going to prove that the act results in a conviction makes it less prejudicial than it would otherwise be if it were -- if the act itself were proved up in *People v. Tran*, which is 51 Cal.App.4th, 1040 and 50 2011 [sic] case. Court of Appeals [sic] was very offended by the fact that prior actions were being proved by a conviction. It was less prejudicial since the jury would not wonder if they had to convict the defendant of a charged offense to make up for the fact that he wasn't convicted from [sic] the prior

---

<sup>2</sup> The trial court also ruled that it would exclude evidence of a separate incident from 2013 involving defendant and offered by the prosecution pursuant to section 1101, subdivision (b), even though the 2013 incident was closer in time than the 2003 conviction for elder abuse. The reference to section 1108 appears to be a transcript error, as the trial court was likely referencing section 1101.

offense. That's the reasoning. [¶] So the 1109 evidence comes in. I don't think the fact it was in 2003 makes it unreasonably distant, especially since it's the same offense that's been charged here. It's relevant. They are used by the jury to prove this position."

At trial, the prosecutor called Los Angeles Police Department Detective Maria Davalos, who testified that after Estrella was arrested she ran his rap sheet, which showed Estrella's history of arrests and their dispositions. Estrella had a 2003 conviction for felony elder abuse. On cross-examination by the defense, Davalos stated she was not involved in, and had no information about, the incident that led to Estrella's conviction in 2003.

In the defense case, Estrella testified regarding the 2003 conviction:

"[Defense Counsel]: Now, back in 2003, there was a case involving elder abuse with you. Who was that with?

"[Estrella]: That was my older sister.

"[Defense Counsel]: How much older is your sister than you?

"[Estrella]: Two years.

"[Defense Counsel]: This is 14 years ago?

"[Estrella]: Approximately, yes.

"[Defense Counsel]: So at that time you were approximately 70 years old?

"[Estrella]: Yes.

"[Defense Counsel]: What happened with that?

“[Estrella]: Well, it was a -- it was really a domestic quarrel we were having over the [division] -- the value of the furniture. My mother had passed away. This was a few months prior to this incident. And we were talking about the division of the furniture. And she said that she was taking all of it, and a quarrel ensued. After that, I said, no, that wasn’t so. I said we’re taking some of it ourselves, meaning me and my younger sister. So --

“[Defense Counsel]: So based on that there was a dispute about dividing up the furniture?

“[Estrella]: Yes, a quarrel.

“[Defense Counsel]: And what happened?

“[Estrella]: Well, the quarrel got heated up, and she took a slap at me. And me and my anger, I slapped back, and she got up, and she said, I’m calling the police.”

Estrella testified that he was arrested shortly afterward. On cross-examination, the prosecutor questioned Estrella further:

“[Prosecutor]: And you were not convicted of a misdemeanor; you were convicted of a felony; isn’t that right?

“[Estrella]: No. It was a misdemeanor.

“[Prosecutor]: It was a misdemeanor? Okay. [¶] So if - you’re sure it was a misdemeanor? . . .

“[Estrella]: Positive. My P.D. told me that it was a misdemeanor by sentence.”

The prosecutor later introduced a record that demonstrated Estrella “was convicted on December 11, 2003,

for violating Penal Code section 368, subsection (b) subsection (1), harming an elder/dependent adult as a felony,” which was admitted into evidence.

During closing argument the prosecutor stated:

“So which person are you supposed to believe? Has the witness been convicted of a felony? And as you know in this case, People’s 12, I believe, shows his rap sheet conviction. In addition to Detective Davalos’s testimony, you will also see the rap sheet that shows the actual conviction, the date of the conviction, I believe even the case number. And yes, it’s a felony conviction.

“It is not a defense that he beat his sister. It is not a defense that she was only two years older than him. Remember the elements we talked about. You don’t add to the elements. There is no age differential. There is no get-out-of-jail free card if you only beat your family members. No. He was convicted of elder abuse. And that is something you are allowed to consider.”

After conviction, Estrella moved for new trial, arguing that the admission of the prior conviction denied him due process. At a hearing on the matter the trial court stated:

“[T]he issue of the alleged prior act of domestic violence was raised pre-trial by [defense counsel]. At that time I asked for a proffer from the prosecution, analyzed the proffer both under 1109

and 352, and made a tentative ruling pre-trial that the alleged prior act would come in under 1109 but told [defense counsel] and [the prosecutor] that if anything materially changed during the trial from the proffer by the prosecution that it should be brought to my attention and I might adjust my ruling accordingly.

“The evidence came in at trial. The jury was then properly instructed under 1109. No objection to the instruction was lodged by [defense counsel]. The jury came back quickly. Probably they weren’t out maybe more than an hour, maybe two, in terms of deliberation. And there were no notes from the jury indicating that they had any questions one way or the other pertaining to the prior act.”

The court asked if the parties agreed with its summary and they assented. It then denied the motion:

“Okay. Then turning to the motion itself, I’m not persuaded for the following reasons. First of all, as I’ve indicated and as the parties agree, the court gave the defense a full and fair opportunity to litigate the motion, analyze it under 1109 and 352. Although [defense counsel] disagreed with the conclusion reached by the court, I didn’t hear from the defense either then or now that the court employed an improper legal analysis.

“During trial, the testimony regarding the prior act was extremely brief, and my recollection

of [the prosecutor's] closing argument on the record in this regard speaks for itself, but my recollection is that although she mentioned the prior act and its potential use under 1109 by the jury, I don't believe she placed any undue weight on it in terms of her overall presentation of the case.

"No evidence whatsoever that the jury did not follow the court's limiting instructions, to which there was no objection by the defense, or otherwise gave the evidence any improper weight."

The court added that it was of the opinion that the evidence against Estrella was overwhelming.

The court denied the motion for new trial.

### **Analysis**

Preliminarily, we reject Estrella's argument that the reasons the trial court gave on the record were insufficient to support its ruling. "[A]s the Supreme Court has repeatedly and recently reaffirmed, 'when ruling on a section 352 motion, a trial court need not expressly weigh prejudice against probative value, or even expressly state that it has done so. All that is required is that the record demonstrate the trial court understood and fulfilled its responsibilities under . . . section 352.' [Citations.]" (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1315 (*Jennings*)). Moreover, "a party cannot argue on appeal that the trial court erred in

failing to conduct an analysis it was not asked to conduct.” (*Fruits, supra*, 247 Cal.App.4th at p. 208, fn. omitted.) “We will affirm the trial court’s evidentiary ruling if it is correct on any theory of law applicable to the case, even if for reasons different than those expressly stated by the trial court.” (*Id.* at p. 205.)

The trial court’s analysis in this case was sufficient. The record shows the court was aware that its decision on admissibility under sections 1109 and 352 required balancing of probative value and undue prejudice, and the court articulated its reasons for admitting the evidence under section 352, and demonstrated an awareness of the particular concern that the prior conviction was remote in time.<sup>3</sup> The court stated that the 2003 offense was not “unreasonably distant,” “especially since it’s the same offense that’s being charged here. It’s relevant.” The court noted that the fact that there was a conviction in the earlier offense decreased the chance that the jury would punish Estrella for that offense. At the motion for new trial, the court added that the jury was unlikely to be confused

---

<sup>3</sup> The court’s awareness of the issue of remoteness of defendant’s prior conviction in 2003 is also apparent from the fact that at the same time the court ruled the 2003 conviction admissible, the court precluded the People from offering evidence of a different incident from 2013 as *modus operandi* evidence under section 1101. The court expressly noted that it was excluding the section 1101 evidence from 2013, but not the prior conviction from 2003, “even though [the 2013 incident is] closer in time.”



because it was properly instructed and the prosecutor did not place “undue weight” on the evidence of the prior offense. The jury had not submitted any questions regarding the issue. The record demonstrates that “the trial court understood and fulfilled its responsibilities under . . . section 352.” (*Jennings, supra*, 81 Cal.App.4th at p. 1315.)

The trial court did not abuse its discretion. It could reasonably conclude that the evidence was admissible because its probative value substantially outweighed its prejudicial effect, even starting from a presumption that the prior conviction was inadmissible because it was remote in time. There were distinct similarities between the crimes. In both cases, Estrella was convicted under Penal Code section 368, subdivision (b)(1). Penal Code section 368, subdivision (b)(1) can be violated in different ways by different classes of people. It penalizes “[a]ny person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered . . . .” (Pen. Code, §368, subd. (b)(1).) Caretakers and non-caretakers alike may be prosecuted

under the statute. A non-caretaker like Estrella may be liable if he “willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering.” In this case and the prior case, Estrella willfully inflicted unjustifiable physical pain on an elderly person by striking the victim. Estrella focuses on his own age and infirmities rather than the similarities of the crimes and the victims. But in both instances he attacked victims more vulnerable than himself—an older woman and an elderly man who was more physically limited than himself—and was able to do so despite his own advanced age. Although it is impossible to know whether Estrella claimed self-defense in the 2003 incident, in both cases he maintained that the victim initiated the physical conflict and he retaliated with significantly greater force. Evidence was presented that Estrella let “his anger” get out of control over minor disagreements in both cases, resorting to physical violence to obtain furniture in the prior case and to stop “malicious” coughing in the present one. (See *Johnson, supra*, 185 Cal.App.4th at p. 533 [“The common factors in all three crimes strongly suggest defendant has a problem with anger management, specifically with regard to female intimate partners, and specifically when he feels rejected or challenged by such a partner.”]) In addition, the sources of evidence and the victims of the crimes were independent, which weighs in favor of admission. (See *Falsetta, supra*, 21 Cal.4th at p. 917 [probative value is greater where sources of evidence are independent].) The

trial court could reasonably conclude that the prior conviction had significant probative value.

The trial court could also reasonably conclude that the possibility that Estrella would suffer prejudice was low, even considering the greater hurdle imposed by the remoteness in time of the prior conviction and its presumed inadmissibility pursuant to subdivision (e).

The prior offense was not more inflammatory than the current offense. In this case, the jury found true the allegation that Estrella inflicted great bodily injury on an elder under Penal Code section 12022.7, subdivision (c). The jury did not make a serious bodily injury finding in the 2003 case. The only evidence of the degree of violence in the 2003 case was Estrella's own testimony that he "slapped" his sister, whereas in the instant case evidence was presented that Estrella hit and kicked Shahin multiple times. There was no evidence to indicate that Estrella's sister required medical treatment or suffered injuries as a result of the attack. Shahin, on the other hand, was confined to a hospital for three days and required dental care. Estrella's reaction in the conflict with his sister was more sympathetic. It occurred shortly after his mother died when emotions may be heightened. Estrella attacked Shahin because he coughed in an offensive manner.

The possible prejudicial impact was also reduced because the prior offense evidence reflected that Estrella was convicted of the offense. The jury would likely feel less desire to punish Estrella because he was already punished

for the offense. (See *Falsetta, supra*, at p. 917 [prejudice is reduced where defendant suffered a conviction for the prior offense].)

It is also highly unlikely that Estrella was prejudiced by admission of the evidence because “the jury instructions on reasonable doubt, the necessity of proof of the elements of the offenses, the limited purpose for which the evidence of the prior abuse was admitted and the requirement that the prior abuse had to be proven by a preponderance of the evidence substantially reduced the risk of prejudice.” (*Fruits, supra*, 247 Cal.App.4th at p. 207.) The jury was admonished under CALCRIM No. 853A that: “If you decide that the defendant committed the uncharged abuse of an elder, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit abuse of [an] elder, and based on that decision, also conclude that the defendant was likely to commit elder abuse likely to cause great bodily injury, as charged in Count One. If you conclude that the defendant committed the uncharged abuse of [an] elder, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of the offense charged in Count One. The People must still prove it beyond a reasonable doubt.” (CALCRIM No. 853A, as given to the jury in this case.) We assume the jury understood and followed these instructions. (*People v. Lindberg* (2008) 45 Cal.4th 1, 26; *People v. Panah* (2005) 35 Cal.4th 395, 492.)

Estrella argues that section 1109, subdivision (a)(2) was enacted to protect elderly persons from abusive caretakers, and is inapplicable to cases like his, where the perpetrator is a non-caretaker and elderly himself. The plain language of section 1109, subdivision (a)(2) and Penal Code section 368, subdivision (b)(1) demonstrate that the statutes were intended to protect elderly persons regardless of their degree of independence. (*People v. Statum* (2002) 28 Cal.4th 682, 690 [“The plain language of the statute establishes what was intended by the Legislature.”].) The definition of abuse contained in section 1109, subdivision (d)(1) is not limited to caregivers, and specifically delineates circumstances in which only a caretaker may be liable. (§ 1109, subd. (d)(1) [“deprivation of care by a caregiver” is abuse].) Similarly, the elder abuse statute protects the elderly from both caretakers and non-caretakers. (Pen. Code, § 368, subd. (b)(1) [applies to “[a]ny person” under specific circumstances and persons “having the care or custody of any elder” under other, broader circumstances].) The language of the statutes demonstrates that the legislature recognized the differences between elder abuse by caretakers and non-caretakers and determined that admission of prior uncharged acts for the purpose of demonstrating propensity was appropriate in both instances.

Under the facts of this case, it was not unreasonable for the trial court to conclude that the probative value of the evidence of Estrella’s 2003 conviction substantially outweighed its prejudicial effect, even taking into

consideration the higher degree of scrutiny called for by its presumptive inadmissibility due to the nearly 14-year gap between its commission and the commission of the current offense. We conclude the trial court's exercise of discretion was not ““arbitrary, capricious or patently absurd,”” and affirm the judgment. (*Fruits, supra*, 247 Cal.App.4th at p. 202.)

### DISPOSITION

The judgment is affirmed.

MOOR, J.,

We concur:

BAKER, Acting P.J.

JASKOL, J.\*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.