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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. CORRINNA CARABAJAL, Defendant and Appellant.	B290813 Los Angeles County Super. Ct. No. KA115675

APPEAL from a judgment of the Superior Court of Los Angeles County, Thomas C. Falls, Judge. Affirmed.

Lise M. Breakey, 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, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Corrinna Carabajal was convicted of unlawfully taking or driving a rental car. In a case where the sole defense was defendant's mental state, we conclude the trial court erred by refusing to give instructions negating the intent element for the charged offense. We also conclude, however, that there was no reasonable probability those instructions would have changed the result. Accordingly, we affirm.

PROCEDURAL BACKGROUND

By amended information, the People charged defendant with one count of driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a)). The information alleged defendant had suffered one strike prior (Pen. Code, § 667, subd. (d); Pen. Code, § 1170.12, subd. (b)) and three prison priors (Pen. Code, § 667.5, subd. (b)). Defendant pled not guilty and denied the allegations.

The jury found defendant guilty on the substantive offense and found true the special allegations that she "unlawfully drove the vehicle on or after March 31, 2017," and that her "unlawful taking or driving of a vehicle … caused a loss exceeding $950." After a bench trial on the prior conviction allegations, the court found the allegations true.

The court sentenced defendant to a term of 16 months—one-third the middle term sentence of 24 months, doubled for the strike prior. The court imposed and struck the three one-year prison priors. The 16-month term was subordinate to a term of 21

years in a separate case, which is the subject of a separate appeal.[1]

Defendant filed a timely notice of appeal.

FACTUAL BACKGROUND

1. Prosecution Case

1.1. Defendant rents a car from Enterprise with a return date of February 25, 2017.

On February 23, 2017, defendant rented a 2016 Nissan Sentra from Enterprise Rent-a-Car (Enterprise). Allstate Insurance Company (Allstate) had referred defendant to Enterprise and had agreed to pay for the rental after a driver insured by Allstate damaged defendant's 2007 Nissan Altima. Allstate's practice was to authorize the rental for three days, but once they confirmed the car was "in the shop being repaired," [they] tend[ed] to extend beyond that." The length of the extension would depend on how long the shop needed to repair the vehicle. Defendant left a credit card number and signed a rental agreement with a return date of February 25, 2017. Defendant did not return the car on February 25, 2017.

1.2. After some confusion, Enterprise extends the rental to March 30, 2017.

On March 1, Enterprise left messages for defendant, informing her the rental's last day had been February 25, 2017. After not hearing from defendant, Enterprise left a voice mail and sent a text message on March 21, 2017, warning defendant

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[1] *People v. Carabajal* (B290762, app. pending).

the company would report the rental car stolen if defendant did not contact them.

On March 22, 2017, Allstate contacted Enterprise and explained they had mistakenly told defendant she could have the rental until March 25. Allstate would contact defendant and let her know they had stopped paying for her rental on February 25. Enterprise then spoke with defendant and confirmed she would return the car the following morning. Enterprise warned defendant that if she failed to return the car, the company would "start the process and report [the] car to [the] authorities."

The next morning, March 23, 2017, Allstate agreed to pay for the rental through March 30, 2017, because they were still waiting for a field adjuster to write an estimate. Allstate left "a detailed voice message" for defendant, explaining that Allstate would not pay for the rental beyond March 30, 2017.

On March 27, 2017, Enterprise spoke with defendant and confirmed she would be returning the rental car on March 30.

1.3. Defendant fails to return the rental car.

Defendant did not return the rental car on March 30. Her grandson called Allstate on March 31, 2017,[2] asking to extend the rental, but Allstate told him the rental's last day had been March 30. On April 5, 2017 defendant called Allstate to ask about the payment for repairing her car, and Allstate informed her they had issued a check for $1,143 on March 29.

On April 7, 2017, defendant called Allstate and asked the company to extend the rental, but Allstate told her they would

[2] The parties stipulated defendant was in custody in San Bernardino County from March 27 to April 4.

not pay for the rental beyond March 30. If defendant "wanted to keep the car, that was her choice. However, it would be an out-of-pocket expense beyond 3-30-2017."

On Saturday, April 8, 2017, defendant arranged to deliver her damaged car to Cruz Auto Body. Defendant did not have registration tags or insurance for her car. Ricardo Romero, a shop employee, suggested defendant drive her car to the shop, and he would drive the Enterprise rental car. After defendant got her car to the shop, defendant drove away in the rental car.

Defendant called Allstate on April 10, 2017 seeking an extension, but a manager told her Allstate would not extend the rental. Allstate "opted not to extend [the] rental" because defendant had "been in a rental vehicle … from 2-23 until 3-30 with no work being done, no repairs being done with the vehicle … ." On the same day, defendant spoke with Enterprise and reported that her car was now at the shop. She told Enterprise that Allstate had agreed to "extend the rental since the shop only got the supplement today." Defendant would call back with the adjuster's name and the name of the shop so that Enterprise could extend the rental.

On April 11, 2017, defendant called Allstate again asking for an extension. Allstate denied the request, reiterating they would not pay for the rental past March 30.

On April 13, 2017, Enterprise checked with Allstate "to see if there would be any more extensions since we hadn't heard from the manager." An Allstate adjuster informed Enterprise that Allstate would not extend the rental past March 30 "per manager."

1.4. Enterprise sends a demand letter on April 17, 2017, and reports the car embezzled on May 31, 2017.

On April 17, 2017, Enterprise sent a Vehicle Code section 10855 demand letter notifying defendant that as of April 4, 2017, defendant was no longer authorized to operate the vehicle.[3] The letter instructed her to stop driving the car, park it in a safe location, and let Enterprise know where it was parked. Failure to immediately surrender the car would result in Enterprise reporting the car as embezzled. The demand letter was delivered on April 19, 2017. Defendant acknowledged receiving the letter.

On May 5, 2017, defendant again asked Allstate to extend the rental period. She claimed her car had not been repaired properly, and she wanted to speak with Allstate's field adjuster. Allstate declined to extend the rental period.

Enterprise reported the car embezzled on May 31, 2017. On June 12, 2017, the Pomona police department notified Enterprise the car had been impounded.

1.5. Police Record Telephone Conversation with Defendant

During the police investigation, Detective Michael Vandenberg recorded a telephone call between him and defendant. The People played the tape for the jury.

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[3] Vehicle Code section 10855 states: "Whenever any person who has leased or rented a vehicle willfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle."

On the call, defendant asked Vandenberg whether he had reviewed materials and followed up with sources she had provided. Vandenberg responded that he had reviewed the paperwork and had spoken with the people whose names defendant had provided, but they were telling him a different story. In short, there was no record of anyone at Allstate or Enterprise extending defendant's rental period.

Defendant protested that this could not be true, asking "are you kidding me?" She insisted "that's totally not true at all." A "Jolisa, Jorisa, or Jerissa" "she's got me, uh, she got me the, uh, an extension on the car." "Anytime I've had that car, I've always made sure that the Allstate had—had the money, moneys on there." Defendant told Vandenberg that if he examined the company's records, he would see "the extension on the car, who signed for it, who called for it."

Vandenberg said he had examined the records and "[n]one of the notes indicate there was ever any extensions. All their notes indicate that you were told multiple times to return the car and you failed to do so."

1.6. After her arrest, defendant asks a friend to make a payment on her Enterprise bill.

The People played portions of phone calls defendant made from jail. Defendant called Monica, explaining that if Monica could make a payment to Enterprise on her account, the People would "have to drop the charges on me." Defendant instructed her "if they accept the payment, tell them to email you the receipt, send it to my attorney, and they have to drop the charges." Defendant explained the same thing had happened with another woman at the jail.

Defendant said "[i]t's like me going into a store, and stealing the—coming out with the items, and they catch me, and I go back in and pay for the items. Or pay for some of the items. And they let me go. They can't charge me with burglary. Or, they can't charge me with petty theft."

2. Defense Case

Defendant testified she believed Allstate should pay for a rental car until her own car was fixed. Defendant "was never under the impression that [the rental needed to be returned] March 30th." "It was not a definite no at that point."

On April 14, 2017, defendant loaned the rental car to Ray, a Black Angels gang member from Ontario. The loan "was only supposed to be momentarily." Ray said he would "bring the car right back," but he did not. Defendant admitted this was a mistake, but she felt "scared," and "kind of forced into it in a sense."

After she received the April 17 demand letter from Enterprise, defendant tried to contact Ray, but he would not return her calls. She did not call the police because she "felt very threatened if I did go to the police. There would be retaliation on me."

DISCUSSION

Defendant contends the court's refusal to give her proposed instructions—CALCRIM No. 3406 (Mistake of Fact), CALCRIM No. 3411 (Mistake of Law), and a special instruction "Good Faith Belief Conduct Legal"—was erroneous and prejudicial.[4] She

[4] Defendant also contends the court erred by failing to instruct the jury, sua sponte, with CALCRIM No. 1863, the claim-of-right defense

argues these instructions "amount[ed] to the same defense …: If [defendant] honestly believed she was allowed to keep the rental car while her damaged car was being repaired and an extension was being worked out, then she lacked the intent to permanently or temporarily deprive the owner of title or possession." The People argue the proposed instructions were not supported by substantial evidence and that any error was harmless. We conclude there was substantial evidence to support the instructions but no reasonable probability defendant would have obtained a more favorable result had they been given.

1. Standard of Review and Applicable Law.

1.1. Vehicle Code section 10851 (Section 10851)

Section 10851, subdivision (a) provides, "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle … is guilty of a public offense … ." "[S]ection 10851 requires a driving or taking with the specific intent to deprive the owner permanently or temporarily of title or possession of the automobile … ." (*People v. Moon* (2005) 37 Cal.4th 1, 26.)

Courts have applied Section 10851 to cases where defendants intended to deny the owner of possession by keeping the vehicle beyond the term of a rental agreement. (See *De Mond*

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instruction. Defendant is mistaken. (See *People v. Covarrubias* (2016) 1 Cal.5th 838, 874 (*Covarrubias*) [there is no sua sponte duty to instruct on the claim-of-right defense because the defense serves only to negate the intent element of theft-related charges].)

v. Superior Court of Los Angeles County (1962) 57 Cal.2d 340 ["magistrate could properly have inferred that defendant kept and drove the rented Pontiac for more than two months beyond the expiration of the agreed period without authorization to do so and with the specific intent to deprive Hav-A-Kar at least temporarily of its possession"]; *People v. Hutchins* (1962) 202 Cal.App.2d 64, 70 ["evidence … indicates that defendant, without the consent of the owner, intended to deprive [Kern Rental Service] of the possession of the automobile by keeping it for more than two weeks after the agreed return date"].)

1.2. Instructional Duty

The court must instruct on a defense when the defendant requests it and there is substantial evidence supporting the defense. (*People v. Williams* (1992) 4 Cal.4th 354, 361.) When a defendant alleges she did not have the necessary mental state because she believed she had a lawful right to possess the property, there must be " 'evidence to support an inference that [the defendant] acted with a subjective belief he or she had a lawful claim on the property.' " (*People v. Tufunga* (1999) 21 Cal.4th 935, 944 (*Tufunga*), quoting *People v. Romo* (1990) 220 Cal.App.3d 514, 519.) " ' "Doubts as to the sufficiency of the evidence to warrant instructions should be resolved in favor of the accused." ' " (*Ibid.*) We review de novo the trial court's refusal to give requested defense instructions. (*People v. Manriquez* (2005) 37 Cal.4th 547, 581.)

2. The trial court erred by refusing to give the proposed instructions.

In this case, the People only needed to prove three things, and two of them were not in dispute. Defendant was guilty of violating Section 10851 if she drove a vehicle belonging to

someone else, without that person's consent, and if she intended to deprive that person of their possession of the vehicle.[5] The sole element in dispute was defendant's mental state.

2.1. Trial Court's Ruling

After the close of evidence, defense counsel argued the evidence supported instructing the jury regarding defendant's good faith belief that her keeping the car was lawful. Counsel explained "[t]he mistake of fact is her mental state of believing she couldn't negotiate a longer time. She did it the first time. They gave her two days, and then they added an additional 42 days afterwards because Allstate made an error in the evaluation [of] that. She also testified that she kept calling, and there are records from Enterprise that there were some calls and

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[5] The court instructed the jury with CALJIC No. 14.36:

"Defendant is accused of having violated section 10851 of the Vehicle Code, a crime.

"Every person who drives or takes a vehicle not her own without the consent of the owner and with the specific intent to deprive the owner either permanently or temporarily of his title to or possession of the vehicle is guilty of a violation of Vehicle Code section 10851, a crime."

"In order to prove this crime, each of the following elements must be proved:

1. A person took or drove a vehicle belonging to another person.

2. The other person had not consented to the taking or driving of his vehicle; and

3. When the person took or drove the vehicle, she had the specific intent to deprive the owner either permanently or temporarily of his title to or possession of the vehicle."

communication from her to them and what was noted down." The court refused the proposed instructions, stating "every one of the later communications clearly indicates she was told to return the car."

2.2. Substantial evidence supported the proposed instructions.

Defendant's testimony alone constituted substantial evidence to support the proposed instructions. Defendant testified she thought Allstate should pay for the rental until her car was repaired. She "was never under an impression [the rental period] would only be till March 30." Defendant also testified that at some point in time, Enterprise asked her to return the car, but "[her] car was still in the shop." She noted that an Allstate manager told her "there could be more extensions regarding the car to be fixed. So it was up in the air." "It was not a definite no at that point." Taking defendant's testimony as true, the jury could infer defendant believed in good faith that Allstate had agreed to pay or would agree to pay for the rental until her car was repaired. (See *Tufunga*, *supra*, 21 Cal.4th at p. 944 ["defendant's own testimony constituted [supporting] evidence"].)

Allstate's initial promise provided additional evidence to support defendant's view that Allstate would pay for the rental. (See *Tufunga*, *supra*, 21 Cal.4th at p. 945 ["defendant's testimony, together with that of the other … witnesses, constituted sufficient evidence to warrant the giving of the claim-of-right instruction"].) Russel Lopez, a manager at Allstate, testified "Allstate agreed to … afford a rental vehicle for [defendant] while her vehicle was in the shop being repaired." Lopez also testified "the vehicle must go into the body shop within a relatively reasonable number of days from the date of

loss," but Allstate and defendant disagreed over what was reasonable and who was at fault for the delay. Defendant was in custody on March 29, but the day after she was released from custody, April 5, she called Allstate and confirmed the company had issued a check for the repairs. Defendant then arranged to get her car to Cruz Auto Body on April 7 or April 8. Based on defendant's conduct, the jury could infer defendant believed getting the car to the repair shop would extend the rental period. (See *People v. Russell* (2006) 144 Cal.App.4th 1415, disapproved on other grounds by *Covarrubias*, *supra*, 1 Cal.5th 838 [defendant's conduct could lead the jury to conclude that defendant had a good faith belief defendant could lawfully possess the property].)

The People contend any reasonable dispute over lawful possession ended on April 14, when she "[gave] away the car to a third party." Defendant's testimony, however, was not that she gave the car away; she testified she loaned the car to Ray, the gang member, expecting him to return it. For the purpose of deciding whether the court had a duty to give the defense's proposed instructions, we must accept defendant's testimony as true. (*People v. Salas* (2006) 37 Cal.4th 967, 982–983 ["In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt.' [Citations.]"].)

The court erred by refusing to instruct the jury as requested by defendant. (*People v. Russell*, *supra*, 144 Cal.App.4th at p. 1431.)

3. The error was harmless.

A court's refusal to give an appropriate pinpoint instruction on the defense theory of the case is reviewed under the harmless error standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836.[6] (*People v. Earp* (1999) 20 Cal.4th 826, 887.) Under this standard, the denial of a pinpoint instruction is harmless where instructions that were given do not preclude findings consistent with the requested pinpoint theory and defense counsel fully argued the point to the jury. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1144 [error harmless where the instructions did not preclude the jury from concluding that mental state was unproved and where "counsel's argument to the jury fully explicated the defense theme"].)

Here, the given instructions did not preclude a finding in favor of defendant's theory of the case. The jury was instructed defendant was not guilty unless the People proved beyond a reasonable doubt she "had the specific intent to deprive the owner either permanently or temporarily of … title to or possession of the vehicle." Defense counsel expressly argued defendant lacked the requisite mental state in closing: He asked the jury to read "the final jury instructions on mental state," and argued defendant was "unsophisticated," "not very clear on things," and tried to do her best in a difficult situation. Defendant had been negotiating an extension "when everything just [went] south."

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[6] A defense instruction seeking to negate or rebut the prosecution's proof on an element of the crime amounts to a "pinpoint" instruction. (*Covarrubias*, *supra*, 1 Cal.5th at pp. 873–874.)

The jury rejected this argument with good reason. Defendant lied and told Enterprise that Allstate had agreed to extend the rental. Defendant also lied to Vandenberg, telling him Jolisa, Jorisa, or Jerissa at Allstate agreed to extend the rental. Then, after defendant was in custody, she had her friend pay $50 on the account, believing this could establish good faith after the fact. And defendant described the payment as a way of getting away with a theft after being caught. The prosecutor argued "you hear her. She said it. It's like getting caught stealing."

Defendant's credibility suffered further because of several prior convictions. She admitted nine prior convictions from May 1984 to February 2012. Her convictions included three petty thefts (1984, 1985, 1995), a robbery (1988), a second-degree burglary (2012), and giving false information to a police officer or administrative official (2011).

On this record, there is no reasonable probability the jury would have reached a different conclusion had they been given defendant's proposed instructions. (*People v. Gutierrez*, *supra*, 28 Cal.4th at p. 1144; *People v. Watson*, *supra*, 46 Cal.2d at p. 837.)

4. Remaining Issue

This court improvidently requested briefing in this appeal on whether remand was necessary to allow the trial court to exercise its discretion to strike the five-year enhancement for the serious felony prior. On closer review, that enhancement was imposed in a different case which is the subject of a separate appeal, B290762. We conclude it would be more appropriate to decide the necessity of remand in the context of that separate appeal.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.