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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JOHNATAN JESUS PALACIOS, Defendant and Appellant.	A168630 (Napa County Super. Ct. No. 23CR000719)

Defendant Jonathan Jesus Palacios appeals from a judgment of conviction for unlawfully driving or taking a vehicle with a qualifying prior felony conviction (Pen. Code,[1] § 666.5), for which he was sentenced to a term of three years in local custody.

The appeal focuses on the trial court's use of three standard jury instructions. Palacios argues the trial court committed error, first, by using CALCRIM No. 359 (corpus delicti: independent evidence of charged crime) because the instruction did not apply to the facts of his case; second, by using CALCRIM No. 376 (possession of recently stolen property as evidence of crime) because the instruction undermined the presumption of innocence and lessened the prosecution's burden of proof; and, third, by using both of the

[1] Undesignated statutory references are to the Penal Code.

foregoing instructions and a third, CALCRIM No. 362 (consciousness of guilt: false statements), because all three are argumentative pinpoint instructions. He also argues reversal is necessary because of the cumulative impact of these errors.

We conclude Palacios's claims lack merit. Accordingly, we will affirm.

I. BACKGROUND

In May 2023, the Napa County District Attorney filed an information charging Palacios with the offense of unlawfully driving or taking a vehicle with a qualifying prior felony conviction in violation of section 666.5. A trial followed in July 2023.

The evidence at trial showed the following.

Richard Mendoza Ramirez (Ramirez) testified that on the night of April 1, 2023, he was driving around Napa doing "side" welding jobs. Between midnight and 1:00 a.m., he stopped at a Subaru car dealership, where he had a job, to drop off a part. He parked his truck at the garage behind the dealership.

The vehicle was a 1996 Tacoma; it was registered to Manuel Ramirez Arias (Arias), Ramirez's uncle. Ramirez turned off the truck and left the key in its ignition. The key was on a chain with another key that he used to get into the truck. There also was a "replacement key" under the middle console. The truck's windows were down and its doors unlocked.

Ramirez went into the garage. He was there for no more than five minutes when he heard his truck engine start. He ran to the truck but its lights turned on, preventing him from seeing anything. The truck took off and he ran after it but he could not catch it. He called the police, who came to the dealership, and he gave a statement. He also called his uncle.

Arias testified that he owned the Tacoma truck and that it was primarily used by Ramirez. The People also presented evidence from the Department of Motor Vehicles showing that the truck was registered to Arias. Arias testified that on the night the truck was stolen, he reported its theft to an investigating officer at the Subaru car dealership. He did not know Palacios and did not give him permission to use the truck.

A Napa police officer, Moaz Ahmad, testified that at 1:46 a.m. on April 2, 2023, he was driving on patrol in Napa when he spotted a Tacoma truck with two occupants that matched the description of a truck that had been reported stolen the night before. He drove behind the truck and called in its license plate to determine if it was still reported as stolen.

While Ahmad was waiting for a report back on the truck's status, it turned down a dead-end street. He received a report that it was still reported stolen, radioed for additional units, turned off his lights, and then turned down the dead-end street. The truck was now parked and facing in his direction, with the two occupants still inside it. The truck doors opened and two people got out.

One of the two people alighting from the truck was Palacios, who exited from the driver's side door, and the other was a female. Ahmad activated his emergency lights and approached the truck to prevent the two people from fleeing. He exited his vehicle and drew his service weapon, commanding the two to stop. They complied with his directions.

Another officer helped Ahmad handcuff Palacios and the other person, both of whom lay prone on the ground. After Palacios was taken to a patrol vehicle, a key was found where he had been laying on the ground. The key opened the truck and started the engine.

Another Napa police officer, Adam Barrera, testified that on April 1, 2023, he responded to a report of a stolen vehicle at a Subaru car dealership and took statements at the dealership from Ramirez and Arias. The next night, he heard a radio report by Officer Ahmad about the stolen vehicle and went to where the vehicle and Palacios were located. Video recorded on Barrera's body camera was played for the jury.

In the video,[2] Palacios says, "We didn't do nothin man," and denies having any weapons. Barrera says, apparently to another officer, "Yeah, [unintelligible] stolen from Subaru." The officers then attend to Palacios, and Barrera asks Palacios his name. Palacios says, "Tony," and, asked for his last name, says, "Tony Cortez." Barrera asks, "Do you have an ID on you?" Palacios responds, "No, this this dude just sold it to me," and, "He gave me the key and everything too, boss."

When Barrera expresses skepticism and asks, "[W]ho said anything about the car yet?", Palacios says, "You guys did," and "You said it's a stolen car." He continues, "I said no, I just bought it. He gave me the key and everything." Barrera testified that, as seen in the video, Palacios was wearing gloves. Barrera also testified that he listed Palacios's correct name in a report he wrote on the matter after either he identified himself or one of the officers recognized him, and did not indicate in the report that Palacios should be charged with giving a false name to an officer.

The jury found Palacios guilty as charged. The trial court sentenced Palacios to the midterm of three years in local custody, subject to time served and conduct credits totaling 261 days.

Palacios filed a timely notice of appeal.

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[2] We summarize the following from a transcript shown to the jury as it viewed the video.

II. DISCUSSION

A. *Palacios's CALCRIM No. 359 Claim*

Palacios argues the trial court violated his constitutional rights to due process and to give a complete defense under California law and the Sixth and Fourteenth Amendments of the federal Constitution by giving CALCRIM No. 359, the corpus delicti instruction, because the instruction does not apply to the facts of his case. First, he argues, he made no incriminating confession or admissions, since his statements to police of a false name and purportedly just buying the truck could not by themselves be a basis for his conviction. Second, he contends, there is "no question" the truck was stolen and that he was driving it. Thus, he concludes, "[t]he concern of the corpus delicti rule—confession to an imaginary crime—was entirely absent." Palacios further argues the error was prejudicial because CALCRIM No. 359 was likely to confuse the jury.

We reject the argument on the merits.

1. Additional Background

After the prosecution proposed the trial court instruct with CALCRIM No. 359, the court discussed the instruction with counsel. CALCRIM No. 359 as given states:

"The defendant may not be convicted of any crime based on his out-of-court statements alone. You may rely on the defendant's out-of-court statements to convict him only if you first conclude that other evidence shows that the charged crime was committed.

"That other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed.

"This requirement of other evidence does not apply to proving the identity of the person who committed the crime. If other evidence shows that

the charged crime was committed, the identity of the person who committed it may be proved by the defendant's statements alone.

"You may not convict the defendant unless the People have proved his guilt beyond a reasonable doubt."

Defense counsel objected to CALCRIM No. 359 because of a concern, as the court put it, "about the reference to other evidence may be slight and need only be enough to support a reasonable inference that a crime was committed." Defense counsel added that the only statement he thought might be implicated, Palacios's giving of a "false name," was not relevant to the charges. He also thought the instruction was not needed because there was enough evidence to support a reasonable inference that a crime was committed.

The prosecutor said she did in fact intend to argue the false name statement was incriminating, and asserted the court had a sua sponte duty to instruct on the corpus delicti rule whenever an accused's extrajudicial statement was part of the prosecution's evidence.

The court concluded it had a sua sponte duty to give CALCRIM No. 359 unless the parties stipulated to there being sufficient evidence that a crime was committed by somebody. It gave the instruction.

In closing argument, the prosecutor referred to the prosecution witnesses, including Ramirez and Arias, when she talked about witness credibility, pointing out that they answered all the questions asked by both sides. She then argued it was "really not at issue" that Arias's truck was stolen while Ramirez was using it, that Ahmad found Palacios in the truck's driver's seat, and that Arias did not know Palacios and did not give him permission to use his truck.

The prosecutor explained the two prosecution theories—that Palacios was guilty of the unlawful driving and/or taking of the truck—and argued why the evidence supported each. She contended it was incriminating that Palacios was spotted in the truck "a short period of time after the vehicle was taken" (about 25 hours later), was wearing gloves, gave police a false name, and "blurted out a story" about someone selling him the truck.

In his closing argument, defense counsel asserted it was not enough that "Palacios was driving a truck that the day before was reported stolen." Counsel emphasized, "Ramirez could not identify anyone who took his truck. He couldn't even identify how many people were in the truck." Further, counsel said, "Ramirez was never asked if he knew Mr. Palacios," which was "a little bit of a concern." Palacios "must have gotten the truck from someone else" who he thought owned the truck, particularly because he was found with one key rather than the two Ramirez said he left in the truck's ignition.

Defense counsel attempted to explain away the prosecution's evidence by pointing out that Palacios said he had just bought the truck only after he heard the police say it was stolen, contending that Palacios probably gave a false name to police because he was scared, and suggesting that Palacios wore gloves because it was probably a little cool outside that late at night. Counsel also argued it was exculpatory that Palacios drove the truck around with its correct license plate and cooperated with police rather than attempting to flee.

The jury deliberated for less than two hours before finding Palacios guilty as charged.

2. Legal Standards

Our Supreme Court has instructed, "In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its

cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168–1169 (*Alvarez*), original italics.) The rule is not mandated by statute and has never been deemed a constitutional guaranty, but has its roots in the common law. (*Id.* at p. 1169.) It "is intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened." (*Id.* at pp. 1169.)

Consistent with the corpus delicti rule, the *Alvarez* court wrote, "[w]henever an accused's extrajudicial statements form part of the prosecution's evidence, the cases have additionally required the trial court to instruct sua sponte that a finding of guilt cannot be predicated on the statements alone." (*Alvarez*, *supra*, 27 Cal.4th at p. 1170, italics omitted.) That said, "[i]t is also well established that a defendant's inculpatory out-of-court statements *may* . . . be relied upon to establish his or her identity as the perpetrator of a crime. [Citations.] This is because the perpetrator's identity is not part of the corpus delicti." (*People v. Rosales* (2014) 222 Cal.App.4th 1254, 1260, original italics.)

We review de novo whether or not a trial court should have given an instruction in any particular case. (*People v. Waidla* (2000) 22 Cal.4th 690, 733.) Palacios does not argue CALCRIM No. 359 incorrectly states the law. Still, "[g]iving an instruction that is correct as to the law but irrelevant or inapplicable is error." (*People v. Cross* (2008) 45 Cal.4th 58, 67.)

3. Analysis

Palacios's CALCRIM No. 359 argument is unpersuasive for two reasons: first, the corpus delicti rule applies to potentially incriminating extrajudicial statements by a defendant offered by the prosecution even if not confessions and admissions and, second, whether or not the truck was

unlawfully taken or driven *was* at issue between the parties here, even if not a main focus of their debate.

a. *Extrajudicial Statements Other Than Confessions or Admissions*

Palacios is incorrect that corpus delicti instructions should only be given when defendants make explicit confessions or admissions. While the parties have not identified a case, and we have not found one in our independent research, in which false statements to police arguably showing consciousness of guilt were held to be subject to the corpus delicti rule, the reasoning and holding of our Supreme Court's cases lead us to the conclusion that they are subject to the rule.

In *Alvarez*, *supra*, 27 Cal.4th 1161, our high court indicated the corpus delicti rule applies to potentially incriminating extrajudicial statements by defendants other than confessions or admissions. As we have discussed, the court stated that the prosecution cannot prove the corpus delicti by relying exclusively on "*extrajudicial statements*, confessions, *or* admissions of the defendant." (*Id*. at pp. 1168–1169, italics added.) It held, thus, that "[*w]henever an accused's extrajudicial statements form part of the prosecution's evidence*, the cases have additionally required the trial court to instruct sua sponte that a finding of guilt cannot be predicated on the statements alone." (*Id*. at p. 1170, italics added and omitted.)

The court's reference to "extrajudicial statements" without qualification is a clear indication that the rule applies to arguably incriminating statements that are not confessions or admissions. This is in accord with the reasoning underlying the rule, which is "intended to ensure that one will not be falsely convicted, by his or her untested words alone, of a crime that never happened." (*Alvarez*, *supra*, 27 Cal.4th at p. 1169.) Clearly, the People intended to use Palacios's statements here to show he committed the crimes

charged. As we read the applicable law, therefore—as confirmed by both the language and reasoning of *Alvarez*—the corpus delicti rule applies to his case.

Palacios criticizes the People for their failure to identify a case involving the application of the corpus delicti rule to extrajudicial statement such as his, rather than to a confession or admission. But *Alvarez* itself involved a statement that also was not a direct confession or admission to the crime charged. Alvarez was convicted of, among other things, a forcible lewd act upon a child under 14 years of age. (*Alvarez*, *supra*, 27 Cal.4th at p. 1166.) The evidence indicated "that on two occasions before the attack, defendant had expressed a sexual interest" in the victim. (*Id*. at p. 1167.) Alvarez argued the trial court prejudicially erred in failing to instruct the jury on the corpus delicti rule with CALCRIM No. 359's predecessor, CALJIC No. 2.72 (see *People v. Rosales*, *supra*, 222 Cal.App.4th at pp. 1258–1259) because his two pre-offense statements were the only evidence of his intent. (*Alvarez*, at pp. 1167–1168.) The appellate court agreed and reversed the forcible lewd act conviction. (*Id*. at p. 1168.)

Our Supreme Court granted review to consider whether the electorate's adoption of Proposition 8 (approved 1982), which amended our state Constitution to prohibit the exclusion of relevant evidence from criminal proceedings subject to limited exceptions, abrogated the corpus delicti rule in California. (*Alvarez*, *supra*, 27 Cal.4th at p. 1165.) The court held Proposition 8 *did* abrogate the rule to the extent it might be a basis for the exclusion of a defendant's extrajudicial statements, but *did not* abrogate the rule insofar as it requires that every *conviction* must be supported by some proof of corpus delicti besides such statements and that the jury be so instructed. (*Ibid*.) The *Alvarez* court concluded the Court of Appeal panel had correctly rejected the People's argument that Proposition 8 had

abrogated the need for a corpus delicti instruction—but further concluded that any instructional error was harmless, and reversed. (*Id.* at p. 1166.)

Alvarez is not the only case in which our Supreme Court has indicated the corpus delicti instruction should be given for extrajudicial statements other than confessions or admissions. In *People v. Beagle* (1972) 6 Cal.3d 441 (*Beagle*), defendant Beagle was convicted of attempted arson and arson regarding two fires that occurred on buildings near each other. (*Id.* at p. 447–448.) In the course of investigating, police both arrested Beagle and obtained a Pepsi-Cola bottle, containing gasoline and a wick, taken from the roof of one of the buildings. (*Id.* at pp. 448–449.) In Beagle's presence, an officer poured out a small quantity of the bottle's contents and held a match to it, and the liquid ignited rapidly. (*Ibid.*) Beagle said, " 'You can't arrest me for arson because the bottle didn't break,' " although the police had not mentioned their discovery of the bottle nor questioned Beagle as to either fire. (*Id.* at p. 449.) The court concluded that, in light of this statement, "[t]he trial court erred in failing to instruct *sua sponte* that the corpus delicti must be proved independently of admissions [citation] and that evidence of oral admissions must be viewed with caution."[3] (*Id.* at p. 455.)

Alvarez's and Beagle's statements were neither confessions nor admissions regarding the crime for which they were convicted. One might argue they were more or less incriminating than what Palacios said in giving a false name or claiming that he had just purchased the truck (if the jury chose to believe this statement too was false (see, e.g., *People v. Collins* (2025)

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[3] The court ruled the instruction also should have been given because of a pre-offense statement by Beagle that he wanted to hire someone to firebomb a bar that was in the building where the bottle was found. (*Beagle*, *supra*, 6 Cal.3d at p. 455.) As in *Alvarez*, the court concluded the errors were harmless. (*Id.* at pp. 455–456.)

17 Cal.5th 293, 334 [" ' "it is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends" ' "]), but that is beside the point. Our high court's conclusion that there was instructional error in both cases indicates CALCRIM No. 359—which focuses on conviction consistent with *Alvarez*'s holding—must be given for any potentially incriminating extrajudicial statements by a defendant, at least if the defendant disputes whether a crime occurred and such a statement is material to an element of the charged crime. To the extent *Beagle* may be read more narrowly, *Alvarez*, which was published after *Beagle*, indicates otherwise.

As the People argue, Palacios's statements of a false name and that he had just bought the truck are substantial evidence of a consciousness of guilt (see *People v. Hughes* (2002) 27 Cal.4th 287, 335 [stating, regarding a defendant's denial that he knew the victim or had been in her apartment, that "false statements by a defendant are admissible to demonstrate consciousness of guilt" (fn. omitted)]; *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1669 ["When a suspect makes false statements for the purpose of misleading or warding off suspicion, though these acts are by no means conclusive of guilt, they may strengthen the inference arising from other facts."].) The jury could reasonably conclude Palacios gave a false name and said, in response to a request for his identification and also, in the jury's view, falsely, that he had just bought the truck (regardless of his knowledge that the police were investigating a stolen vehicle) because he sought to avoid arrest for stealing the truck. So viewed, Palacios's statements disputed whether a crime had occurred and were material to an element of the charged crime, thus requiring the court sua sponte to give CALCRIM No. 359.

b. *Whether the Truck Was Unlawfully Taken Was at Issue*

Palacios also contends that CALCRIM No. 359 was inapplicable because whether a crime had actually occurred—such as whether anyone stole the truck—was not at issue between the parties. That is incorrect.

As we have discussed, the trial court's decision to give CALCRIM No. 359 was based in part on the absence of a stipulation that a crime—such as the unlawful taking of the truck—had occurred. Palacios ignores the evidentiary lacunae on the elements of vehicle theft and instead argues there was "no question in this case that the truck was stolen by someone . . . ." And that also ignores that the only evidence the truck was stolen was Ramirez's account, which the jury was not required to believe (e.g., *People v. Collins*, *supra*, 17 Cal.5th at p. 334 [exclusive province of the jury to determine the credibility of a witness]).

Palacios's counsel even raised a question about Ramirez's account in his closing argument. Counsel did not acknowledge the truck was stolen, saying merely that it "was reported stolen." He then pointed out that Ramirez could not identify anyone who took the truck and that "Ramirez was never asked if he knew Mr. Palacios," which, defense counsel said, was "a little bit of a concern." This implied that the jury should not necessarily believe the truck was stolen at all.

In short, we conclude the trial court did not err in instructing the jury with CALCRIM No. 359 under the circumstances of this case.

B. *Palacios's CALCRIM No. 376 Claim*

Palacios next argues the trial court erred in instructing the jury with CALCRIM No. 376, entitled "Possession of Recently Stolen Property as Evidence of a Crime." He contends the instruction undermined both the presumption of innocence and the beyond a reasonable doubt standard of

proof, thereby prejudicially violating his due process rights under the Sixth and Fourteenth Amendments of the federal Constitution.

1. Additional Procedural Background

The trial court instructed the jury with CALCRIM No. 376 as follows:

"If you conclude that the defendant knew he possessed property and you conclude that the property had in fact been recently stolen, you may not convict the defendant of Unlawful Driving or Taking of a Vehicle based on those facts alone. However, if you also find that supporting evidence tends to prove his guilt, then you may conclude that the evidence is sufficient to prove that he committed Unlawful Driving or Taking of a Vehicle.

"The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstances tending to prove his guilt of Unlawful Driving or Taking of a Vehicle.

"Remember that you may not convict the defendant of any crime unless you are convinced that each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt."

Defense counsel objected to instructing with CALCRIM No. 376 for the same reason he objected to CALCRIM No. 359, that its reference to "slight" evidence was improper. The court decided to give the instruction because the jury was capable of sorting things out and the instruction expressly required it to find Palacios was guilty beyond a reasonable doubt.

2. Legal Standards

A "long-standing rule of law . . . allows a jury to infer guilt of a theft-related crime from the fact a defendant is in possession of recently stolen property when coupled with slight corroboration by other inculpatory circumstances which tend to show guilt." (*People v. Barker* (2001)

91 Cal.App.4th 1166, 1173, citing *People v. McFarland* (1962) 58 Cal.2d 748, 754–758, *People v. Anderson* (1989) 210 Cal.App.3d 414, 420–432.) In *McFarland*, our high court "approved . . . jury instructions . . . which essentially stated that (1) mere possession of recently stolen property, standing alone, was insufficient to find guilt; (2) possession, however, was a circumstance properly considered in connection with evaluating other evidence on the question of guilt or innocence; (3) some other (even slight) corroborative evidence tending to prove guilty knowledge, when coupled with possession of recently stolen property, is sufficient to sustain a conviction. ([*McFarland*,] at pp. 758–759.)" (*People v. Anderson*, at p. 426.)

Again, we review de novo whether or not a trial court should have given an instruction in any particular case. (*People v. Waidla*, *supra*, 22 Cal.4th at p. 733.)

3. Analysis

Palacios acknowledges that appellate courts, including our Supreme Court, have upheld the use of CALCRIM No. 376 or its predecessor in the face of similar arguments.

Most recently, in *People v. Lopez* (2011) 198 Cal.App.4th 698 (*Lopez*), defendant Lopez was charged with a variety of crimes, including burglary, both grand and petty theft of personal property, and buying or receiving stolen property. (*Id*. at pp. 703–707.) He argued on appeal, among other things, that the trial court violated his due process rights by instructing with CALCRIM No. 376 because, among other things, it reduced the prosecutor's burden of proof in violation of Lopez's rights under the Fifth, Sixth, and Fourteenth Amendments of the federal Constitution. (*Id*. at pp. 710–711.)

The appellate court rejected his claim and in doing so, summarized the relevant law:

"Similar to its predecessor, CALJIC No. 2.15, CALCRIM No. 376 is based on a 'long-standing rule of law [that] allows a jury to infer guilt of a theft-related crime from the fact a defendant is in possession of recently stolen property when coupled with slight corroboration by other inculpatory circumstances [that] tend to show guilt.' " (*Lopez*, *supra*, 198 Cal.App.4th at p. 709, fn. omitted.) Further, "CALCRIM No. 376 is substantially similar to the previous pattern jury instruction on this issue, CALJIC No. 2.15. [Citation.] Our Supreme Court repeatedly has approved CALJIC No. 2.15 in the face of constitutional challenges. (See, e.g., *People v. Holt* (1997) 15 Cal.4th 619, 676–677; *People v. Johnson* (1993) 6 Cal.4th 1, 37–38, disapproved on other grounds in *People v. Rogers* (2006) 39 Cal.4th 826, 879.)

"Similar to its predecessor, CALCRIM No. 376 prohibits the jury from drawing an inference of guilt based solely on evidence that the appellant knowingly possessed recently stolen property. The jury is allowed, however, to draw an inference of guilt where there is additional supporting evidence, even if the supporting evidence would not be sufficient, by itself, to constitute proof beyond a reasonable doubt. 'As long as the corroborating evidence together with the conscious possession could naturally and reasonably support an inference of guilt, and that inference is sufficient to sustain a verdict beyond a reasonable doubt, we discern nothing that lessens the prosecution's burden of proof or implicates a defendant's right to due process.' [Citations.]

"In *Barnes v. United States* (1973) 412 U.S. 837, the United States Supreme Court noted that '[f]or centuries courts have instructed juries that an inference of guilty knowledge may be drawn from the fact of unexplained possession of stolen goods.' (*Id.* at p. 843.) The *Barnes* court found that such an inference comported with due process if the evidence necessary to invoke

the inference is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt. (*Ibid.*)" (*Lopez*, *supra*, 198 Cal.App.4th at pp. 710–711.)

The *Lopez* court rejected Lopez's contention (like Palacios's here) that the reference to "slight" supporting evidence reduced the prosecution's burden to below that of proof beyond a reasonable doubt: "With respect to CALCRIM No. 376's predecessor, the appellate court in *People v. Snyder* (2003) 112 Cal.App.4th 1200 (*Snyder*), held that 'CALJIC No. 2.15 does not create an improper presumption of guilt arising from the mere fact of possession of stolen property, or reduce the prosecution's burden of proof to a lesser standard than beyond a reasonable doubt. Rather, the instruction "relates a contrary proposition: a burglary . . . may not be presumed from mere possession unless the commission of the offense is corroborated." [Citation.] The inference permitted by CALJIC No. 2.15 is permissive, not mandatory. Because a jury may accept or reject a permissive inference "based on its evaluation of the evidence, [it] therefore does not relieve the People of any burden of establishing guilt beyond a reasonable doubt." [Citation.] Requiring only "slight" corroborative evidence in support of a permissive inference, such as that created by possession of stolen property, does not change the prosecution's burden of proving every element of the offense, or otherwise violate the accuser's right to due process unless the conclusion suggested is not one that reason or common sense could justify in light of the proven facts before the jury. [Citations.]' (*Id.* at pp. 1226–1227.)

"Similarly here, CALCRIM No. 376 makes it quite apparent that the 'slight' supporting evidence is not to be considered in isolation, but together with all of the other evidence for purposes of determining whether there is proof beyond a reasonable doubt that the defendant committed robbery. [Citation.] The instruction expressly requires the jury to be 'convinced that

each fact essential to the conclusion that the defendant is guilty of that crime has been proved beyond a reasonable doubt.' (CALCRIM No. 376.) Thus, CALCRIM No. 376 does nothing to diminish the prosecution's burden of proof. (See, e.g., *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 189 [CALJIC No. 2.15 contains no suggestion that the jury need not find that all of the elements of the crime have been proved beyond a reasonable doubt].)" (*Lopez*, *supra*, 198 Cal.App.4th at pp. 710–711.)

As the *Lopez* court indicated, the United States Supreme Court has also long approved of permissive inference instructions in circumstances such as Palacios's. "A permissive inference suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion." (*Francis v. Franklin* (1985) 471 U.S. 307, 314.) "A permissive inference does not relieve the State of its burden of persuasion because it still requires the State to convince the jury that the suggested conclusion should be inferred based on the predicate facts proved. . . . A permissive inference violates the Due Process Clause only if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury." (*Id.* at pp. 314–315; see *People v. Goldsmith* (2014) 59 Cal.4th 258, 270 ["Permissive inferences violate due process only if the permissive inference is irrational"].)

Here, evidence was presented that Palacios was found with a stolen truck about 25 hours after its theft, and a jury could reasonably conclude from the evidence that he was driving it at the time, was wearing gloves, and possessed a key that opened the truck's door and started its ignition. CALCRIM No. 376 reasonably instructed the jury on the permissive inferences it could draw from this evidence. The instruction did not reduce the prosecution's burden of proof because it did not require the jury to make

any such inferences and reminded it that it must find guilt beyond a reasonable doubt.

Palacios acknowledges *Lopez* and the law it summarizes, but argues that CALCRIM No. 376 nonetheless does not apply to his case "because the stolen property was not found near the time of theft and a second person was in the truck with [Palacios]." Further, CALCRIM No. 376, as applied to his case, "assumes that [Palacios's] mere presence in the truck was to be interpreted as evidence of his guilt as the thief of the truck and thus improperly suggesting to the jury that only 'slight evidence' of guilt for the actual taking is needed to infer [Palacios's] guilt from the fact of his possession of the truck. . . . The instruction is flawed because such a strong presumption of guilt is inappropriate when the circumstance at issue, [Palacios's] presence in a stolen truck with another person, and only a single key, 24 hours after theft, has, at best, only a very weak tendency to indicate he actually stole the truck or drove it intending to deprive the rightful owner of it in the circumstances, rather than purchased it, as he told the officers." Palacios further contends that "[l]ittle about the circumstances of his arrest showed that [Palacios] was the actual thief of the truck," attempting to explain away the incriminating evidence as his trial counsel did in closing argument.

These arguments are unpersuasive. We see nothing particularly unusual about the circumstances in which Palacios was found with the truck. We have already summarized significant evidence that cast suspicion on him. And there was nothing particularly delayed, and certainly no notable delay as a matter of law, between the time of the truck's theft and the discovery of Palacios with it—a span of about 25 hours. Palacios also fails to explain why the presence of a second person was necessarily so negating in light of the

overall circumstances. His contentions amount to a plea that we interpret the evidence only in his favor and ignore the incriminating implications that a jury could reasonably draw. But as we have discussed, the weighing of the evidence is the jury's prerogative. And, as the case law makes plain, there is no basis for reversal here because the jury was instructed that it was *not* required to infer Palacios's guilt from the evidence and *was* required to find guilt beyond a reasonable doubt.

Palacios also argues that the California case law, much of which we have summarized from *Lopez* and which includes our Supreme Court's approval of the predecessor to CALCRIM No. 376, CALJIC No. 2.15, "is incorrect." He contends that case law, and the United States Supreme Court's analysis in *Barnes* (which we have summarized from *Lopez* as well), applies only to *unexplained* possession of stolen goods, whereas he provided an explanation to police. Again, however, the jury was under no obligation to believe his explanation. His argument once more would have us reach a legal conclusion based on his interpretation of the evidence alone, which would be inappropriate.

Finally, Palacios argues the trial court erred here in a manner analogous to the error discussed in three federal cases, published before *Lopez* and much of the law it discusses, wherein trial courts instructed that once the existence of an agreement to or common scheme of conspiracy is shown, only "slight evidence" was needed to tie a defendant to the conspiracy. (See *United States v. Gray* (5th Cir. 1980) 626 F.2d 494 (*Gray*); *United States v. Partin* (5th Cir. 1977) 552 F.2d 621; *United States v. Dunn* (9th Cir. 1977) 564 F.2d 348.) The *Lopez* court rejected this argument, which Lopez based on *Gray*. *Gray*, the court wrote, "dealt with a conspiracy instruction tied to the substantive element of a conspiracy charge. . . . Here, the issue was whether

guilt on a burglary charge may be inferred from the possession of recently stolen property along with other supporting evidence. *Gray* is not analogous or persuasive." (*Lopez*, *supra*, 198 Cal.App.4th at p. 712.)

Further, our Supreme Court rejected a challenge to CALCRIM No. 376's predecessor, CALJIC No. 2.15, that argued the instruction lessened the prosecution's burden of proof based on two of the same federal cases Palacios cites, *Partin* and *Dunn*. (*People v. Grimes* (2016) 1 Cal.5th 698, 730–731.) Our Supreme Court explained, "The problem with the instruction addressed in these federal cases is that it permitted the jury to conclude that the defendant was a participant in the conspiracy based only on 'slight evidence.' By contrast, CALJIC No. 2.15 permits conviction of theft-related offenses based upon evidence that the defendant was recently found in possession of stolen property *plus* additional, 'slight,' corroborating evidence. We have recognized that '[p]ossession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt.' [Citation.] Defendant's reliance on the federal conspiracy cases is therefore inapt." (*Grimes*, at p. 731.)

We agree with the reasoning in these cases and adopt it here. Accordingly, we conclude that Palacios's CALCRIM No. 376 argument has no merit.

C. *Palacios's Argumentative Instructions Claim*

Finally, Palacios argues each of three instructions that the trial court gave to the jury, CALCRIM Nos. 359 and 376, which we have already quoted and discussed, as well as CALCRIM No. 362, entitled "Consciousness of

Guilt: False Statements,"[4] were argumentative pinpoint instructions favoring the prosecution in violation of California law and the Sixth and Fourteenth Amendments of the federal Constitution.[5] He further contends the "synergistic combination" of the three instructions isolated the evidence crucial to the prosecution's case and created improper inferences about that evidence, thereby "push[ing] the prosecution's view of isolated linchpin pieces of evidence," meaning his "nonconfession statements and presence in the truck."

The People argue Palacios has forfeited this argumentative claim by failing to object below to any of the three instructions on that ground. Nonetheless, we will address the claim because "the issue raised asserts a

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[4] The jury instructed with CALCRIM No. 362 as follows:

"If the defendant made a false or misleading statement before this trial relating to the charged crime, knowing the statement was false or intending to mislead, that conduct may show he was aware of his guilt of the crime and you may consider it in determining his guilt.

"If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself."

Palacios objected to this instruction because it gave "undue weight" to his giving the arresting officers a false name. The court decided to give the instruction.

[5] In his reply brief, Palacios for the first time implicates another instruction the trial court gave to the jury, CALCRIM No. 358, in his analysis, but he does not appear to argue that instruction itself was improper (he alludes to its impropriety in a heading, but that appears to be an erroneously stated reference to CALCRIM No. 376; he also for the first time argues CALCRIM Nos. 359, 362, and 376 were improper because, when taken as a whole, they lessened the prosecution's burden of proof. We will not consider these tardy arguments. (*People v. Taylor* (2020) 43 Cal.App.5th 1102, 1114 [tardy arguments raised for the first time in appellant's reply brief were forfeited].)

violation of substantial constitutional rights." (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1574.)

1. Legal Standards

"A trial court must instruct on the *law* applicable to the facts of the case." (*People v. Mincey* (1992) 2 Cal.4th 408, 437 (*Mincey*), original italics.) " 'An instruction should contain a principle of law applicable to the case, expressed in plain language, indicating no opinion of the court as to any fact in issue.' " (*People v. Wright* (1988) 45 Cal.3d 1126, 1135 (*Wright*).) "In a proper instruction, '[what] is pinpointed is not specific evidence as such, but the *theory* of the defendant's case.' " (*Id.* at p. 1137, original italics.)

A court must refuse " ' "an instruction that is argumentative, i.e., of such a character as to invite the jury to draw inferences favorable to one of the parties from specified items of evidence." ' " (*People v. Sanders* (1995) 11 Cal.4th 475, 560; *Mincey*, *supra*, 2 Cal.4th at p. 437.) Even neutrally phrased instructions that "ask the jury to consider the impact of specific evidence" (*People v. Daniels* (1991) 52 Cal.3d 815, 870) or "imply a conclusion to be drawn from the evidence" (*People v. Nieto Benitez* (1992) 4 Cal.4th 91, 105, fn. 9), may be rejected as argumentative. (*Ibid.*; *People v. Daniels*, at pp. 870–871.)

Again, we review de novo whether or not a trial court should have given an instruction in any particular case. (*People v. Waidla*, *supra*, 22 Cal.4th at p. 733.)

2. Analysis

According to Palacios, the three instructions, regarding corpus delicti (CALCRIM No. 359), consciousness of guilt (CALCRIM No. 362), and possession of recently stolen property (CALCRIM No. 376), "mirrored the instruction rejected as argumentative in *Mincey*." He argues the three instructions invited the jury to draw inferences unfavorable to him, consider

the impact of certain evidence—his false name statement and being in the recently stolen truck—and reach a particular conclusion based on implications in the instructions that were unfavorable to him. And he repeats his contentions why CALCRIM No. 359 did not apply to the facts of his case to explain why that instruction was argumentative.

Palacios's contention that these instructions are argumentative fails for a simple reason: they do *not* highlight any particular evidence, nor do they imply any inferences or conclusions should be made against him. Rather, they appropriately state the law applicable to the prosecution's theory of the case, and were called for in light of substantial evidence the prosecution presented. The prosecution's theory was that Palacios stole the truck or drove it knowingly without the owner's consent soon after it was stolen, and that proof of these offenses included that he made false statements to the police that showed his consciousness of his guilt. The instructions were appropriately given to assist the jury's understanding of the relevant law underlying this theory and appreciation that it was free to assess the sufficiency of evidence supporting the theory.

Mincey is inapposite. There, the defendant, Mincey, was convicted of first degree murder for killing a young boy. (*Mincey*, *supra*, 2 Cal.4th at p. 426.) There was evidence that Mincey had beaten the boy for years. (*Id*. at pp. 426–431.) He appealed from the trial court's denial of his proposed instruction that it was possible " 'the beatings were a misguided, irrational and totally unjustifiable attempt at discipline.' " (*Id*. at p. 437.) The California Supreme Court rejected his challenge because, "[i]n asking the trial court to emphasize to the jury the possibility that the beatings were a 'misguided, irrational and totally unjustifiable attempt at discipline rather than torture,' [Mincey] sought to have the court invite the jury to infer the

existence of his version of the facts, rather than his theory of defense." (*Ibid*.) Here, the trial court did not give any instruction analogous to such an instruction.

As for the specific instructions Palacios challenges, we have already explained in discussion section A above the reasons why CALCRIM No. 359 *was* applicable to the facts of this case. We incorporate that analysis and will not repeat it here. We will only add that CALCRIM No. 359 does not refer to any specific piece of evidence or suggest any inferences or conclusions be made about any evidence, nor can it be reasonably understood to call for conviction based on extrajudicial statements alone. And with its cautions about the use of evidence and the prosecution's burden of proof, the instruction can hardly be said to favor the prosecution.

Our Supreme Court has also rejected argumentative claims regarding the other two instructions or their similar predecessors. For example, in *People v. Moore* (2011) 51 Cal.4th 386, the court rejected a challenge to CALCRIM No. 362's predecessor, CALJIC No. 2.03, as " 'unfairly partisan and argumentative.' " (*People v. Moore*, at pp. 413–414.) The court concluded the instruction did not suggest any inference be made, but merely advised the jury to determine what significance, if any, should be given to evidence of consciousness of guilt, as well as advise the jury that such evidence was not sufficient to establish guilt. (*Id*. at p. 414; see also, e.g., *People v. Letner and Tobin*, *supra*, 50 Cal.4th at p. 189 [consciousness of guilt instructions "not impermissibly argumentative"] *People v. Rundle* (2008) 43 Cal.4th 76, 153–154 ["We repeatedly have rejected the claim that the standard consciousness of guilt instructions, such as the one given by the trial court . . . regarding defendant's false statements, improperly describe the issue of the defendant's

state of mind at the time of the crime or direct the jury to draw any impermissible inference on that subject."].)

In *People v. Yeoman* (2003) 31 Cal.4th 93, our Supreme Court considered the same kind of challenge Palacios makes but to CALCRIM No. 376's predecessor, CALJIC No. 2.15 (*Lopez*, *supra*, 198 Cal.App.4th at p. 709) (as well as to another instruction, CALJIC No. 2.06 (*People v. Yeoman*, at p. 131)). The court rejected the challenge, which contended the instruction violated *Wright*, *supra*, 45 Cal.3d at page 1137, because the court concluded it had a proper purpose rather than an argumentative one. (*People v. Yeoman*, at p. 131.) The court wrote, "Among other things, CALJIC No. 2.15 informs the jury that conscious possession of recently stolen property is insufficient, without corroboration, to sustain a conviction. 'If the court tells the jury that certain evidence is not alone sufficient to convict, it must necessarily inform the jury, either expressly or impliedly, that it may at least consider the evidence. Nothing in *Wright* affects such an instruction.' (*People v. Kelly* (1992) 1 Cal.4th 495, 531–532.)" (*People v. Yeoman*, at p. 131.)[6]

For the foregoing reasons, we conclude Palacios's argumentativeness claim lacks merit.

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[6] In his reply brief, Palacios contends our Supreme Court "abandoned the *Kelly* rationale" in *People v. Seaton* (2001) 26 Cal.4th 598, when it concluded the trial court's failure to give a consciousness of guilt instruction, while in error, was harmless because "the instructions would have benefited the prosecution, not the defense." (*Id.* at p. 673.) Palacios is mixing apples and oranges here. *Kelly* explained why the instruction should be given in appropriate circumstances, an explanation which the *Seaton* court affirmed by finding error, not whether or not the failure to give it was harmless in any particular case. Regardless, as we have just indicated, the court affirmed the validity of *Kelly*'s reasoning after *Seaton* by quoting it in *Yeoman*.

D. Cumulative Error

Having found no error, we reject without further discussion his contention that we must reverse the judgment because of the cumulative impact of the trial court's errors.

III. DISPOSITION

The judgment is affirmed.

STREETER, J.

WE CONCUR:

BROWN, P. J.
MOORMAN, J.*

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