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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID HOWARD MACIAS,

Defendant and Appellant.

A130106

(Contra Costa County
Super. Ct. No. 51006584)

I. INTRODUCTION

A jury convicted appellant of unlawfully taking or driving a motor vehicle. (Veh. Code, § 10851, subd (a). The trial court found true allegations that appellant suffered a prior conviction for vehicle theft and had served two prior prison terms. (Pen. Code §§ 666.5; 667.5.) Appellant was sentenced to a total term of five years in state prison.

Appellant contends that the judgment must be reversed because there is insufficient evidence to support his conviction and because he was prejudiced by two jury instructional errors. We reject these contentions and affirm the judgment.

II. STATEMENT OF FACTS

1. *The Charged Offense*

Zardasht Muntazir is the registered owner of a black 1999 Acura CL. In early 2010, Zardasht went to Afghanistan to work as a translator for the U.S. Army. He left the

Acura in the care of his brother Kanishka Muntazir, giving Kanishka the car keys, instructions and insurance documents.¹

On May 8, Kanishka told his friend Kathryn Loux that she could borrow the Acura for half an hour. Loux returned the car the following day and told Kanishka that she threw the keys on his bed. However, Kanishka never found those keys. So, on May 10 he called a locksmith. The locksmith made new keys but said he had to “program” them so the alarm would not go off, and that he would deliver the keys the next day. The locksmith asked for payment that day, but Kanishka refused to pay.

On the morning of May 11, Kanishka noticed that the Acura was gone. He contacted the Fremont police and reported the Acura was stolen. Kanishka told Fremont Police Officer Perry that he suspected Loux may have stolen the car because she did not return the keys after he let her borrow it.² He also told the officer that he was suspicious of the locksmith because he took so much time making the key, said it would not work until he took it away to program it, and could not explain why the alarm kept going off when Kanishka had been under the impression that the alarm was disconnected.

On May 14, at about 1:18 a.m., Antioch Police Officer Brian Rose was on duty when he noticed a black Acura CL traveling north on Lone Tree Way. The license plate on the Acura was not illuminated as required by law and there was an air freshener hanging from the rearview mirror which violated the Vehicle Code. Rose activated his lights and siren and stopped the car. Upon learning from dispatch that the car was stolen, Rose drew his gun and ordered the occupants to exit the vehicle. Appellant exited from the driver’s side door. After additional officers arrived, appellant was taken into custody, along with the other occupants of the car: appellant’s mother, sister and girlfriend.

¹ For clarity, we will refer to Zardasht and Kanishka Muntazir by their first names. All date references in our statement of facts pertain to the 2010 calendar year unless otherwise specified.

² At trial, Kanishka denied telling the officer that he was dating Loux. However, Perry testified that when he took the stolen car report, Kanishka told him that he had been dating Loux and had given her permission to drive the car on several occasions.

Appellant was transported to the Antioch police station where he waived his *Miranda* rights and agreed to talk. Appellant told Officer Rose that he borrowed the Acura from a woman named Kelly, who he had met the previous day. Appellant said that he paid Kelly \$26 so he could use the car. He did not know Kelly's last name or how to contact her and he had not made arrangements for returning the car to Kelly. Appellant told the officer that he did not know the Acura was stolen. However, he also admitted to Rose that he knew the car could have been stolen.

The police inspected the car for damage, but found no evidence of tampering with the steering column, door locks or ignition. The windows were not broken and the police did not find a shaved key. Two keys were recovered, both of which started the car.

B. *Prior Uncharged Acts*

On the morning of July 28, 2007, a Fremont police officer observed appellant and a passenger drive a 1991 Red Ford Explorer into a Motel Six parking lot. The officer ran the license plate and learned the vehicle had been reported stolen. Appellant and another man were arrested after they got out of the car and began to walk toward the motel. Appellant was in possession of a set of keys and a remote for an audio device in the stolen car.

On August 15, 2008, at around 6:30 p.m., a Union City police officer was on patrol when he noticed a group of men peering into a Lexus that was parked in front of a residence. As the officer approached, the men appeared to notice him and walked away. The officer ran the license plate and discovered that the Lexus had been reported stolen. He detained several of the men who had been looking in the vehicle as they attempted to disappear into the garage of the residence. Appellant was one of those men. The residence was equipped with a video surveillance monitoring system which showed appellant as he drove alone in the Lexus, parked it in front of the residence and then left it there. The officer inspected the inside of the car and did not observe any signs of tampering or damage to the ignition system.

C. *The Defense Case*

Appellant testified on his own behalf. He admitted to the jury that he stole the Lexus and that he bought the Explorer from a person who told him that the car was stolen. However, appellant said that he decided to go to trial on the present charge because he did not steal the Acura and he did not know it was stolen.

Appellant testified that he needed transportation on May 13 because he had to do errands and get to a landscaping job in Antioch. His friend Lindsey said he knew somebody who could lend appellant a car, so Lindsey picked appellant up at around 6:30 a.m. and took him to a hotel in San Leandro where he met Kathryn Loux. Appellant testified that he gave Loux \$26 so that he could use her car. He told her he would return it later that day and that he would contact her through one of her friends. Loux gave him the keys, which did not appear to be shaved. Appellant retrieved the car from a parking lot. He did not notice anything unusual or anything to indicate that the car had been stolen. Appellant spent the rest of the day doing errands, then went home to Hayward and then set out for his landscaping job around 8 or 9:00 p.m.

Appellant testified that he did not know his way around Antioch, so he went to his mother's house in Pittsburgh to pick up his sister, who was familiar with the area and could show him how to get to the landscape job. Appellant's sister was not home so he picked up his mother who went with him to find his sister and then all three went to the Antioch house together. Appellant was going to do the landscape work at a vacant house in Antioch for a friend who was trying to sell the house. He and his family arrived at the Antioch house at around 11:00 p.m. where they met appellant's girlfriend who was already there. Appellant's plan was to do the landscape work the next morning. The group stayed at the house until around 1:00 a.m. They were on the way to get drinks when the police pulled them over.

Appellant admitted that he told the police that he borrowed the Acura from a woman named Kelly when he knew that Loux's name was Kathryn. He testified that he was "shocked" that the car had been reported stolen and that he was also a "little confused" and he did not want to get Loux in trouble, so he covered for her by giving the

police a false name. Appellant testified that he had no knowledge that the car was stolen and no intent to steal it.

During cross-examination, appellant admitted that he would lie to avoid getting into trouble. He testified that, on the morning of May 13, his friend Lindsey drove him to the hotel where he met Loux, although he could not recall the name of the hotel and said he did not know Lindsey's last name. After confirming appellant's prior testimony that he had agreed to return the Acura to Loux that same day, the prosecutor asked why appellant still had the car the next day. Appellant explained that he had a second, chance encounter with Loux later in the day on May 13 at around 2:00 p.m. when he drove his friend Miguel or Mike to a Hayward Best Western where Mike had plans to meet a girl. That girl turned out to be Loux, who had checked out of her San Leandro hotel room and moved to Hayward.

Appellant testified that when he saw Loux at the Best Western, he told her he was not done using the car and she said he could keep using it. After that, he went to his house in Hayward and stayed there until 8 or 9:00 p.m. because he wanted to avoid traffic going to Antioch. Appellant claimed that while he was at home, he tried to contact Loux through Lindsey and Jordan, but Lindsey did not know where she was and appellant could not reach Jordon. Appellant testified that he had given Loux his number, but he did not get her number and he did not know her room number at the hotel.

Appellant insisted that he believed that Kathryn owned the Acura. However, he also claimed that the reason he lied to police about Kathryn's name was because he wanted to protect her and did not want to get her in trouble. Appellant acknowledged that he knew the consequences of a felony conviction for taking or driving somebody's car but said that he made the decision to "lie to the officer to protect a stranger."

In addition to appellant's testimony, the defense elicited evidence from Gloria Patlan, a custodian of records for the Department of Motor Vehicles (DMV). Patlan testified that on May 11, the DMV received a document she described as a release of liability for the Acura. This document notified the DMV that the registered owner of the Acura, Zardasht Muntazir, transferred liability for the car to Kathryn Loux on May 10.

Patlan testified that it was not possible for the DMV to determine who completed the form, when the form was completed or whether it was submitted over the computer or in person. She also testified that the DMV did not conduct any investigation regarding this document and that she could not testify as to whether it was prepared to facilitate a fraudulent transfer.

Patlan testified that, in order to transfer title to another person, the owner of the vehicle must sign the title and the purchaser must complete the information on the back of the title. Because these steps were never taken, the registered owner of the Acura at the time of trial was Zardasht Muntazir.

III. DISCUSSION

A. *Sufficiency of the Evidence*

1. *Issues Presented and Standard of Review*

Appellant challenges the sufficiency of the evidence to support his conviction for violating Vehicle Code section 10851 (section 10851) which states, in relevant part:

“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 (§ 10851, subd. (a).)

“In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ [Citation.]” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

In this case, appellant contends the record does not contain substantial evidence that (1) he did not have the owner’s consent to drive the Acura, or (2) he harbored the requisite specific intent to permanently or temporarily deprive the owner of title or possession. We will separately address these two contentions.

2. *Consent of Owner*

The language of section 10851 “places the burden on the People to show by direct or circumstantial evidence the defendant lacked the consent of the owner. [Citation.]” (*People v. Clifton* (1985) 171 Cal.App.3d 195, 199 (*Clifton*)). In the present case, the prosecution carried that burden by presenting the uncontradicted testimony of Kanishka Muntazir.

Kanishka testified that Zardasht was the legal owner of the Acura and that Zardasht left the car in Kanishka’s possession and control while he was working in Afghanistan. Zardasht gave Kanishka the paperwork and insurance documents and his permission to use the car while he was away. Kanishka did not know appellant and did not give him permission to drive the Acura. Nor did Kanishka give Kathryn Loux permission to use the Acura on the day it disappeared. This uncontradicted testimony supported the jury’s finding that appellant did not have the consent of the owner to drive the Acura.

Appellant contends that Kanishka’s testimony is insufficient to establish lack of owner consent because (1) Kanishka was not the owner of the Acura; (2) Kanishka did not have exclusive authority over the Acura; and (3) the DMV evidence supported appellant’s testimony that he thought Kathryn Loux had authority to loan him the car.

First, the testimony of the legal owner was not required to establish lack of consent. (See, e.g., *Clifton, supra*, 171 Cal.App.3d 195.) From Kanishka’s testimony, the jury could reasonably have concluded that the legal owner of the car was in Afghanistan and that he did not give appellant consent to drive the Acura, either directly or indirectly via his brother Kanishka, who did not even know appellant when the incident occurred.

Appellant relies on *People v. Rodgers* (1970) 4 Cal.App.3d 531 (*Rodgers*). In that case, the complaining witness testified that he parked and locked his wife’s car in a garage on a Saturday and that it was gone when he returned the following Monday. (*Id.* at p. 533.) The defendant, who was arrested while driving the car in question, testified that a “lady friend” who was a dancer, loaned him the car, telling him that she had been

given the car to use by her friend, another dancer, while the latter was in the hospital. The defendant, who had the keys to the car, also testified that he had offered to buy the car and his friend told him that he could buy it but that she could not obtain the pink slip until the owner was released from the hospital. The owner of the car did not testify at trial and “her absence was not explained.” There was no evidence regarding the whereabouts or activities of the car owner “at any time,” or of the arrangements she made regarding the use of her car, or even whether the garage where the car was left belonged to her, her husband or someone else. Indeed, as the *Rodgers* court observed, “[s]o far as the evidence shows, [the owner] could have given her consent to defendant’s use of the car.” (*Ibid.*) Under those circumstances, the court concluded that the evidence did not support a finding that the defendant drove the vehicle without the owner’s consent. (*Id.* at p. 534.)

Appellant maintains that *Rodgers, supra*, 4 Cal.App.3d 531, is factually indistinguishable and compels the conclusion that there is insufficient evidence to support a finding that he did not have the consent of the owner to drive the Acura in this case. We disagree. The problem in *Rodgers* was that there was *no evidence* about the activities or whereabouts of the car owner, either at the time that the car allegedly disappeared or at the time of trial. That problem did not arise here where the whereabouts of the legal owner of the Acura was explained by the evidence: he was in Afghanistan and he left his car in the care of his brother Kanishka who testified at trial that he did not know appellant or give him permission to use the car.

Appellant’s second theory is that Kanishka’s testimony is insufficient because he did not have “exclusive dominion and control” over the Acura. To support this contention, appellant relies on evidence that when Kanishka reported that the Acura was stolen, he told the officer that he had been dating Loux and had given her permission to drive the car on several occasions. This argument overlooks the fact that this case is now on appeal; the question is not whether there is evidence from which a jury could have found that Loux had permission to use the car, but whether the evidence supports the jury’s actual finding that defendant did not have the owner’s consent.

Kanishka testified that “I’m the one with permission” to drive the Acura while Zardasht is in Afghanistan. He also testified that he was not in a dating relationship with Loux when the car disappeared, and that he had given her permission to use the Acura on only two specific occasions, once to run an errand with his mother and the second time on May 8, for one half hour. Kanishka’s testimony was sufficient to support a finding that Loux did not have express or implicit permission to drive the Acura on the day it disappeared or to loan it to somebody else.

Appellant’s final contention pertains to the DMV evidence, but he fails to adequately articulate a valid theory of relevance. Instead, he argues that the DMV evidence “supported” his testimony that he believed that Loux owned the Acura. But nothing in this record even suggests that appellant was aware of the release of liability document when he drove the Acura. More to the point, as the DMV witness expressly confirmed at trial, ownership of the Acura was never transferred to Loux. Thus, Zardasht was the owner of the Acura in May 2010 and at the time of trial, and substantial evidence supports the jury’s finding that appellant did not have the consent of the owner to take or drive the Acura.

3. *Specific Intent*

Appellant also contends there is insufficient evidence to support the intent element of the section 10851 charge. We strongly disagree.

A violation of section 10851 requires proof of a specific intent to deprive the owner of the car of possession or title for either a temporary or permanent period. (*Clifton, supra*, 171 Cal.App.3d at p. 199; *People v. Green* (1995) 34 Cal.App.4th 165, 181 (*Green*)). Knowledge that the vehicle was stolen is not an element of this offense, although such knowledge is “one of the various alternative factors evidencing an intent to deprive the owner of title and possession. [Citation.]” (*Green, supra*, 34 Cal.App.4th at p. 180.)

“Specific intent to deprive the owner of possession of his car may be inferred from all the facts and circumstances of the particular case. Once the unlawful taking of the vehicle has been established, possession of the recently taken vehicle by the defendant

with slight corroboration through statements or conduct tending to show guilt is sufficient to sustain a conviction of Vehicle Code section 10851. [Citation.]” (*Clifton, supra*, 171 Cal.App.3d at p. 200; *Green, supra*, 34 Cal.App.4th at pp. 180-181.)

In the present case, after appellant was arrested he told the police that he borrowed the car from a person named Kelly, that he did not know Kelly’s last name and that he did not know how to contact her. This explanation was false, as appellant himself admitted at trial. Furthermore, appellant attempted to justify his lie to Officer Rose by explaining that his only intent was to protect Loux from criminal prosecution.

“Where recently stolen property is found in the conscious possession of a defendant who, upon being questioned by the police, gives a false explanation regarding his possession or remains silent under circumstances indicating consciousness of guilt, an inference of guilt is permissible. The jury is empowered to determine whether or not the inference should be drawn in light of all of the evidence. [Citation.]” (*Clifton, supra*, 171 Cal.App.3d at p. 200; *Green, supra*, 34 Cal.App.4th at pp. 180-181.)

Thus, appellant’s lie to Officer Rose about how he came into possession of the Acura was circumstantial evidence from which the jury could have found that appellant specifically intended to deprive the true owner of possession and/or ownership of the vehicle. Furthermore appellant’s attempt to justify that lie by testifying that he was just trying to protect Loux from prosecution was circumstantial evidence that appellant did in fact know that Loux did not own the Acura.

In addition, evidence of two strikingly similar prior incidents when appellant intentionally deprived a car owner of title or possession supported the jury’s finding of specific intent. (*People v. Jones* (2011) 51 Cal.4th 346, 371 [“the recurrence of a similar result tends to negate an innocent mental state and tends to establish the presence of the normal criminal intent.”]) In this court, appellant complains the prosecutor used this evidence to smear his character but he also expressly concedes that the evidence was “[t]echnically . . . admissible as relevant to the element of intent.” This argument is internally inconsistent. We accept appellant’s concession that the prior act evidence was

admissible and reject his cursory suggestion that this evidence was inadmissible character evidence.³

In his reply brief, appellant contends that the record “does not support a reasonable and lawful inference that appellant knew he was driving a stolen vehicle.” As noted above, knowledge is not an element of this offense. (*Green, supra*, 34 Cal.App.4th at p. 180.) In any event, as we have already discussed, after appellant was arrested he admitted to Officer Rose that he knew the Acura could have been stolen. Furthermore, at trial appellant testified that he lied to Officer Rose in order to protect Loux from criminal prosecution. Both of these statements were circumstantial evidence that appellant knew he was driving a stolen vehicle.

B. *Mistake of Fact Instruction*

Appellant contends that the trial court committed reversible error by failing to instruct the jury regarding the mistake of fact doctrine. Appellant reasons that he relied on a mistake of fact “defense” to challenge the specific intent element of the section 10851 charge, that this defense was supported by substantial evidence and, therefore, the trial court had a sua sponte duty to give CALCRIM No. 3406, which states that the defendant is not guilty of the charged offense if he “did not have the intent or mental state required to commit the crime because” he “did not know a fact” or he “mistakenly believed a fact.”⁴

³ The jury was expressly instructed that this evidence was admitted for the “limited purpose of deciding whether or not the defendant acted with specific intent to deprive the owner of the vehicle,” that it was not to “conclude from this evidence that the defendant has a bad character or is disposed to commit crime,” that this evidence was not sufficient by itself to establish the defendant’s guilt, and that the “People must still prove each element of the charge . . . beyond a reasonable doubt.” Appellant provides no reason to doubt that the jury followed these limiting instructions.

⁴ CALCRIM No. 3406 states: “The defendant is not guilty of _____ <insert crime[s]> if (he/she) did not have the intent or mental state required to commit the crime because (he/she) [reasonably] did not know a fact or [reasonably and] mistakenly believed a fact. [¶] If the defendant’s conduct would have been lawful under the facts as (he/she) [reasonably] believed them to be, (he/she) did not commit _____ <insert crime[s]> [¶] If you find that the defendant

In criminal cases, “ “even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury’s understanding of the case.” [Citation.]’ ” (*People v. Breverman* (1998) 19 Cal.4th 142, 154.) This duty to instruct, sua sponte, on general principles closely and openly connected with the facts also encompasses an obligation to instruct on defenses that are supported by the evidence and “that are not inconsistent with the defendant’s theory of the case.” (*People v. Montoya* (1994) 7 Cal.4th 1027, 1047; *see also People v. Breverman, supra*, 19 Cal.4th at p. 157.)

However, the sua sponte duty to instruct on general principles of law does not extend to “pinpoint” instructions. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119.) “Such instructions relate particular facts to a legal issue in the case or ‘pinpoint’ the crux of a defendant’s case, such as mistaken identification or alibi. [Citation.] They are required to be given upon request when there is evidence supportive of the theory, but they are not required to be given sua sponte.” (*Ibid.*)

In the present case, appellant contends that mistake of fact is a defense to a section 10851 charge which gives rise to a sua sponte duty to instruct. *People v. Russell* (2006) 144 Cal.App.4th 1415 (*Russell*) supports this contention. *Russell* was an appeal from a conviction for receiving a stolen motor vehicle in violation of Penal Code section 496d. The *Russell* court found that the trial court committed reversible error by violating its sua sponte duty to instruct the jury regarding appellant’s mistake of fact defense. The court reasoned that mistake of fact was a defense to the knowledge element of the charged crime and there was substantial evidence to support that defense. (*Id.* at pp. 1430-1431.)

believed that _____ <insert alleged mistaken facts> [and if you find that belief was reasonable], (he/she) did not have the specific intent or mental state required for _____ <insert crime[s]> [¶] If you have a reasonable doubt about whether the defendant had the specific intent or mental state required for _____ <insert crime[s]>, you must find (him/her) not guilty of (that crime/those crimes).

However, the *Russell* court apparently did not consider whether an instruction on the mistake of fact doctrine should be treated as a pinpoint instruction when that doctrine is used to negate or rebut the prosecutor's evidence of specific intent. In this regard, the People discuss two recent decisions by our Supreme Court which appellant has elected to ignore: *People v. Jennings* (2010) 50 Cal.4th 616, 674-675 (*Jennings*) and *People v. Anderson* (2011) 51 Cal.4th 989, 996-997(*Anderson*).

In *Jennings, supra*, 50 Cal.4th 616, 673, an automatic appeal from a murder conviction, defendant claimed that the trial court committed reversible error by failing to sua sponte instruct the jury concerning the “ ‘complete defense’ ” of accident. The *Jennings* court disagreed, holding that “[a] claim of accident in response to a charge of murder, however, is not an affirmative defense that can trigger a duty to instruct on the court’s own motion.” (*Id.* at p. 674.) Rather, the court concluded that such an instruction is essentially a pinpoint instruction to which the defendant may be entitled, but only upon proper request. As the *Jennings* court explained, “evidence ‘proffered in an attempt to raise a doubt on an element of a crime which the prosecution must prove beyond a reasonable doubt’ may, but only upon request, justify the giving of a pinpoint instruction that ‘does not involve a “general principle of law” as that term is used in the cases that have imposed a sua sponte duty of instruction on the trial court.’ [Citation.] ‘Such instructions relate particular facts to a legal issue in the case or “pinpoint” the crux of a defendant’s case, such as mistaken identification or alibi. [Citation.] They are required to be given upon request when there is evidence supportive of the theory, but they are not required to be given sua sponte.’ [Citation.]” (*Id.* at pp. 674-675.)

In *Anderson, supra*, 51 Cal.4th 989, the defendant was convicted of first degree felony murder with the special circumstance of killing during the course of a robbery. At trial, the defendant did not deny that he ran over the victim while in the process of stealing her car but claimed that it was an accident. Post conviction, the Court of Appeal agreed with defendant that the trial court erred by failing to provide a sua sponte instruction on accident as a defense to the charged crimes. But the *Anderson* court held that “a trial court has no obligation to provide a sua sponte instruction on accident where,

as here, the defendant's theory of accident is an attempt to negate the intent element of the charged crime." (*Id.* at p. 992.)

The *Anderson* court acknowledged that the term "defense" has been used to describe a defendant's claim that he lacked the requisite criminal intent because he committed the act or omission constituting the offense " 'through misfortune or by accident' " (*Anderson, supra*, 51 Cal.4th at p. 997.) However, the court explained that such claims are essentially " 'unnecessary restatements, in a defense format, of the requirements of the definitional elements of an offense.' " (*Ibid.*) The court then held that when the defense of accident is raised to rebut the mental element of the charged crime, "assuming the jury received complete and accurate instructions on the requisite mental element of the offense, the obligation of the trial court in each case to instruct on accident extended no further than to provide an appropriate pinpoint instruction upon request by the defense." (*Id.* at p. 998.)

Anderson and *Jennings* elucidate the following guiding principles: " '[W]hen a defendant presents evidence to attempt to negate or rebut the prosecution's proof of an element of the offense, a defendant is not presenting a special defense invoking sua sponte instructional duties. While a court may well have a duty to give a 'pinpoint' instruction relating such evidence to the elements of the offense and to the jury's duty to acquit if the evidence produces a reasonable doubt, such 'pinpoint' instructions are not required to be given sua sponte and must be given only upon request.' " (*Anderson, supra*, 51 Cal.4th at pp. 996-997, quoting *People v. Saille, supra*, 54 Cal.3d at p. 1117; see also *Jennings, supra*, 50 Cal.4th at pp. 674-675.)

Applying these principles in the present case, we conclude that the trial court did not have a sua sponte duty to instruct the jury regarding the mistake of fact doctrine. As appellant concedes, the function of his mistake evidence was to attempt to rebut the mental element of the section 10851 charge. Furthermore, there is no dispute on appeal that the jury was fully and properly instructed regarding the requisite mental element of

section 10851.⁵ Thus, under these circumstances an instruction on mistake of fact would have been a pinpoint instruction that related certain evidence to an element of the crime and attempted to raise a reasonable doubt as to that element. As such, the trial court did not have a sua sponte duty to give that pinpoint instruction.

Furthermore, even if the court did have a sua sponte duty to give a mistake of fact instruction, the error was harmless on this record. “An erroneous failure to instruct on mistake of fact is reversible error only if it is reasonably probable that the giving of the instruction would have produced a result more favorable to the defendant. [Citation.]” (*People v. Zamani* (2010) 183 Cal.App.4th 854, 866.) No such reasonable probability exists here for several reasons. First, the mistake of fact evidence was weak. Indeed, although appellant’s testimony may have been enough to support a pinpoint instruction upon proper request, that testimony was illogical, contradictory and extremely self-serving. Second, the evidence of appellant’s specific intent was, by comparison, quite strong. Third, there is no dispute that the jury was fully and properly instructed regarding the prosecutor’s burden of proving appellant’s specific intent beyond a reasonable doubt. In light of these circumstances, and the fact that the sole purpose of the mistake evidence was to attempt to negate the specific intent element of the charged offense, we conclude that it was not reasonably likely that giving a mistake instruction would have resulted in a more favorable outcome.

⁵ For example, the jury was instructed: “The crime charged in this case requires proof of the union, or joint operation of act and wrongful intent. [¶] For you to find a person guilty of the crime of Unlawful Driving or Taking of a Vehicle as charged in Count 1, that person must not only intentionally commit the prohibited act, but must do so with specific intent. The act and the specific intent required are explained in the instruction for that crime.”

The jury was also given this instruction: “The defendant is charged in Count 1 with unlawfully taking or driving a vehicle in violation of Vehicle Code section 10851. [¶] To prove the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant drove someone else’s vehicle without the owner’s consent; [¶] AND [¶] 2. When the defendant did so, he intended to deprive the owner of possession or ownership of the vehicle for any period of time.”

C. *The Prosecutor's Burden of Proof*

Appellant contends that the trial court violated its obligation under Evidence Code section 502 (section 502) and committed reversible error by failing to instruct the jury that, in order to establish his mistake of fact defense, appellant was only required to raise a reasonable doubt “of the existence of that fact.”

Section 502 states: “The court on all proper occasions shall instruct the jury as to which party bears the burden of proof on each issue and as to whether that burden requires that a party raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.”

In the present case, the trial court complied with section 502 by fully and properly instructing the jury regarding the presumption of innocence and the prosecutor's burden of proving the defendant's guilt beyond a reasonable doubt. Numerous instructions expressly incorporated the prosecutor's burden of proving guilt beyond a reasonable doubt. For example, the jury was instructed that this burden of proof applied to the elements of the charged offense, including the intent element, and every fact essential to the conclusion that the defendant is guilty. The jury was also expressly instructed that the admission of circumstantial evidence and of evidence of the uncharged priors did not alter the prosecutor's burden of proving every essential fact beyond a reasonable doubt.

Appellant's theory that these instructions were inadequate appears to rest on the false assumption that the court erred by failing to give a mistake of fact instruction. Had that instruction been requested, supported by the evidence and given to the jury, appellant might have had an argument that the court was required to clarify that the defendant's reliance on the mistake of fact doctrine did not lessen the prosecutor's burden of proof. Here, since no mistake of fact instruction was given, there was no danger that the jury may have been confused about the prosecutor's burden. It was thoroughly and accurately instructed regarding that standard.

Appellant mistakenly relies on *People v. Simon* (1995) 9 Cal.4th 493. In that case, the defendant was charged with multiple violations relating to the sales of securities. At

trial, defendant invoked a statutory exemption from the pertinent regulation. The trial court instructed the jury that the “ ‘burden of proving an exemption is upon the defendant.’ ” However, the court did not explain the nature of that burden, i.e., that the defendant only had to raise a reasonable doubt that the securities were not exempt. (*Id.* at p. 501.) Under those circumstances, the *Simon* court found that the instructions were incomplete and prejudicial. (*Ibid.*) In the present case, by contrast, the trial court never instructed the jury that appellant carried any burden of proof with regard to his mistake of fact claim or to any other issue. Rather, as we have already explained, the jury was repeatedly instructed that the prosecutor had the burden of proving every fact necessary to the conviction beyond a reasonable doubt. Thus, *Simon* is inapposite.

Appellant contends that, absent an instruction on the defendant’s burden of proof with respect to his mistake of fact defense, the jury may improperly have shifted some of the prosecutor’s burden to him. Again though, appellant used his mistake of fact theory to rebut or negate evidence of specific intent. The jury was clearly and unequivocally instructed that the prosecutor had the burden of proving specific intent beyond a reasonable doubt. We find no reason whatsoever for doubting that the jury followed this straightforward instruction.

IV. DISPOSITION

The judgment is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.