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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
CARL AROLD WILLIAMS,  
Defendant and Appellant.

A140696  
(Sonoma County  
Super. Ct. No. SCR-635489)

Carl Aroldo Williams was convicted by jury of burglary and receipt of known stolen property. At trial, evidence of a prior burglary was admitted pursuant to Evidence Code section 1101, subdivision (b) (section 1101(b))<sup>1</sup> to prove he acted with the requisite criminal intent. Williams contends that the trial court abused its discretion in admitting the evidence. We disagree and affirm.

**I. BACKGROUND**

In a first amended information, the Sonoma County District Attorney charged Williams with first degree burglary and receipt of known stolen property (Pen. Code, §§ 459, 496, subd. (a)) and alleged a sentence enhancing “strike” (Pen. Code, § 1170.12) for a 2011 first degree burglary conviction. Williams’s case was severed from that of a codefendant and set for trial.

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<sup>1</sup> Undesignated statutory references are to the Evidence Code.

### *Trial Evidence*

On the morning of June 4, 2013, Drew Dirking was at his girlfriend's house in Cotati. The girlfriend had gone to work and left the front door unlocked. Dirking was upstairs waiting for a ride. He heard a car pull up to the house and looked out the window. He saw a white Volkswagen pull up to the curb in front of the house. Dirking testified that his view was unobstructed. The investigating officer later estimated the distance from the window to the sidewalk in front of the house was about 30-40 feet. Two men he did not know got out of driver's and front passenger's doors and walked up to the front door of the house. They knocked, paused, and knocked again. Dirking ignored the knocks because it was not his home and expected them to go away. Instead, he heard the door open and the doorbell ring. He went into the hall and could see the men's reflected images in a picture on an upstairs wall. He saw someone walk into the kitchen to the left of the front door. He then saw in the reflection that the person returned from the kitchen with a laptop in his hands. The person with the laptop was wearing a striped shirt with a collar but he could not make out the color of the shirt. Dirking could not, at this point, make out details of the men's faces.

Dirking said, "Hey," and walked toward the top of the staircase. He could see the men run out of the house. Dirking ran downstairs and out the front door, and he saw one of the men at the front passenger's door of the Volkswagen and the other rounding the car to get to the driver's door. Both men turned and looked at Dirking as they entered the car. The men were both African-Americans of a similar age and complexion, with similar haircuts. Dirking testified that he saw the person in what he now identified as a blue striped shirt, enter the passenger's door with the laptop in his hands. Dirking claimed he got a good look at this person's face and identified him at trial as Williams. Dirking could not remember what the driver was wearing. As the Volkswagen drove away, Dirking memorized the license plate number and went inside and wrote it down. Dirking testified that he observed the car from about 10 feet away and his view was unobstructed. However, he testified that he could "kind of see" the men. "It was really quick. And I . . . just caught their faces and kind of went for the license plate." He

testified that it was “the shirt [that] really caught my eye.” The investigating officer estimated the distance from the front door to the car was about 30 feet.

Dirking called the police, and Officer Paul Goodin responded within a matter of minutes. Dirking described the burglars as African-American males, described the blue striped shirt and vehicle, and provided the license plate number. Goodin relayed the information to police dispatch. Marin County Deputy Sheriff Jared Kansanback received a dispatch asking officers to search southbound Highway 101 for a silver Volkswagen with the given license plate number. Kansanback spotted the car about 20 or 30 minutes later and pulled it over. He ordered the two occupants out of the car. The driver was Bobby Moore, and Williams was the passenger. Goodin arrived at the detention scene (about 80 minutes after his response to the burglary scene) and took over the investigation.

Goodin testified that Moore was wearing a multicolored (including blue) striped jacket or sweater, and Williams was wearing a black polo shirt with a white undershirt. Moore was about six feet one or two inches tall and weighed about 250 pounds, and Williams was about five feet eight inches or six feet tall and weighed about 200 pounds. Goodin determined that Moore was from Hercules and Williams was from Richmond. The car was a Hertz rental car rented by Moore’s grandfather. A laptop was spotted in plain view in the back of the vehicle. Goodin eventually took possession of the laptop, which had a power cord attached. Dirking’s girlfriend later identified the laptop as belonging to her mother.

Goodin drove both suspects to a location in Cotati for an in-field identification. Cotati Police Sergeant Chris Parker brought Dirking to the site and advised him not to draw an inference from the fact that the suspects were in custody and not to identify them as the burglars unless he was positive of the identification. Dirking viewed the suspects from within a patrol car and at a distance of 30 to 40 yards as Goodin escorted the suspects one by one into view. Dirking immediately identified both Williams and Moore as the burglars and noted that Moore was wearing the striped shirt.

### *Prior Criminal Conduct*

In a motion in limine, the prosecution sought admission of evidence pertaining to Williams's 2011 burglary conviction as section 1101(b) evidence of intent, a common plan, and absence of mistake or accident in committing the charged offense. Williams argued the prejudicial effect of the evidence outweighed its probative value under section 352, and that identity rather than intent was the key issue in the current case. The court, noting that the circumstances of the prior burglary were "extremely similar," found that the probative value of the evidence substantially outweighed the prejudicial effect and that the evidence would be admitted "with a limiting instruction."

A Redwood City police officer testified that Williams had committed a burglary in Redwood City in April 2011. The officer had participated in a search for the suspects after they crashed their car and fled on foot. He had found Williams hiding under the staircase of an office building. Property that had been reported stolen from the residence was found in the back of the suspects' vehicle, which was registered to an East Bay rental car agency. Williams's identification listed a Richmond address. Under questioning, Williams told the officer the burglary "was his idea, that he needed money." He had been "driving around smoking marijuana and then an opportunity presented itself. [¶] . . . [¶] . . . I asked him what he meant by 'opportunity,' and he stated, 'I'm probably incriminating myself, but I knew what to do.' [¶] . . . [¶] . . . I asked him, 'Why that house?' [¶] He said he had good instincts and didn't believe anybody was home. [¶] . . . [¶] . . . [H]e told the driver to pull over. [¶] . . . [¶] . . . He got out of the car, knocked on the front door of [the house]. [¶] . . . [¶] . . . [N]obody answered the door. [¶] . . . [¶] . . . He walked to the side of the house, and . . . he pushed the door opened to gain entry to the house. [¶] . . . [¶] . . . He went inside, and he told me he used a pillowcase from the house and put the items that he was stealing, the computer, jewelry, Xbox and the video games, inside the pillowcase and came outside. [¶] . . . [¶] . . . He then went outside to the car which was parked and got inside the back seat, and . . . kind of laid down in the back seat[] [¶] . . . [¶] . . . [t]o conceal himself. . . . [T]here was a neighbor that was across the street watching as he came out." A neighbor reported the burglary.

*Jury Instructions*

Although the prosecution sought to have the prior burglary evidence admitted to establish both common plan (i.e., identity) and intent,<sup>2</sup> the court ruled that the evidence would be admitted only to establish intent. The jury was instructed pursuant to CALCRIM No. 375: “The People presented evidence that the defendant committed another offense of residential burglary that was not charged in this case. [¶] You may consider this evidence only if the People have proved by a preponderance of evidence that the defendant in fact committed the offense [¶] . . . [¶] If you decide that the defendant committed the offense, you may but are not required to consider that evidence for the limited purpose of deciding whether or not: [¶] The defendant acted with the intent to commit theft in this case. [¶] In evaluating this evidence, consider the similarity or lack of similarity between the uncharged offense and the charged offense. [¶] Do not consider this evidence for any other purpose except for the limited purpose of intent. [¶] Do not conclude from this evidence that the defendant has a bad character or is disposed to commit a crime. [¶] If you conclude the defendant committed the uncharged offense, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of residential burglary. The People must still prove the charge beyond a reasonable doubt.”

The court instructed the jury that the crime of burglary required specific intent: “For you to find a person guilty of this crime, that person must not only intentionally commit the prohibited act but must do so with a specific intent or mental state”; “To prove that the defendant is guilty of [burglary], the People must prove that: [¶] 1. The defendant entered a building; [¶] AND [¶] 2. When he entered a building, he intended to commit theft.” (See CALCRIM Nos. 252, 1700.)

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<sup>2</sup> With respect to the prior burglary, the prosecutor argued, “[I]t’s similar to the instant case in that according to [William’s] own statement, he knocked on a door, determined nobody was home. He went around to another door. It was open. He let himself in and selected various items including a laptop . . . . [¶] . . . [¶] He was . . . pulled over a short distance away where he was found in possession of the stolen property and admitted fully to police his involvement in that particular residential burglary.”

Consistent with CALCRIM Nos. 400 and 401, the jury was instructed that “A person may be guilty of a crime in two ways. One, he or she may have directly committed the crime. I will call that person the perpetrator. Two, he or she may have aided and abetted a perpetrator who directly committed the crime. [¶] . . . [¶] To prove that the defendant is guilty of the crime based on aiding and abetting that crime, the People must prove that: [¶] 1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; [¶] AND [¶] 4. The defendant’s words or conduct did in fact aid and abet the perpetrator’s commission of the crime.” Additionally, they received CALCRIM No. 1702: “To be guilty of burglary as an aider and abettor, the defendant must have known of the perpetrator’s unlawful purpose and must have formed the intent to aid, facilitate, promote, instigate, or encourage commission of the burglary before the perpetrator finally left the structure.”

#### *Closing Arguments*

The prosecutor noted that the burglary charge required proof of entry with intent to commit theft and initially argued, “I do not believe this is a highly contested piece whether or not somebody entered and took property. . . . The issue is going to be identity.” Later, however, she focused on the element of intent to commit theft: “How do we know what somebody’s intending to do? . . . [¶] You’re going to have to use . . . circumstantial evidence . . . . [¶] First, it’s a rental car, not a car in his own name. . . . A little more anonymous . . . . This is Sonoma County. He’s not from here. [The burgled home] has no across-the-street neighbors. So this house had opportunity. . . . [¶] . . . Knocking on the door, and then let[ting] himself right in. Those people do not know Mr. Williams. . . . They’re quiet when they walk in. [¶] . . . He selects electronics, . . . a laptop. And the flight after, running out the door, taking off, actually leaving the county, heading towards 580. [¶] And . . . the 2011 Redwood City incident that you heard about this morning, that can be used to determine his intent. . . . [¶] . . . [¶] The point kind of being that people act in certain situation, they act similarly because they have the same

intent. [¶] . . . [¶] . . . In evaluating this evidence, just this 2011 incident, consider the similarity or lack of similarity between the two. When they act similarly, they have the same intent. [¶] We have a rental car in both cases. We have a different county than where he lives. . . . We knock on the door. Nobody answers. He gets himself in. . . . [¶] He selected items like electronics again. And after that one, he fled as well.”

Defense counsel argued Dirking’s observations of the burglars during the burglary were fleeting, distant, possibly distorted in a reflection, and generally unreliable. She suggested that Dirking had identified Williams because Dirking had been told of the car stop and recovery of the stolen laptop, and that one of the two men stopped by police (Moore) was wearing “that very distinctive sweater.” Counsel also argued that the approximately one hour between the burglary and the arrest was “certainly enough time for stops to be made, for individuals in the car to get in, to get out, to drive away.” The prosecutor argued Dirking’s identifications of Williams were reliable, and contended that Moore and Williams could have changed clothing, “[h]owever, it doesn’t matter because of aiding and abetting. . . . [¶] . . . [¶] The perpetrator committed the crime. The defendant knew that the perpetrator intended to commit the crime, i.e., they’re both approaching. They pull over at this location in a rental car. They both approach the door. Somebody is out there knocking, [and] Drew Dirking . . . hears a door bell. . . . And one follows the other one in and, check this out, they got interrupted. [¶] . . . And the defendant’s words or conduct did in fact aid and abet.”

### *Verdict and Sentence*

The jury convicted Williams on both counts. Williams waived his right to a jury trial on the prior conviction allegation, and the trial court found the allegation to be true. The court sentenced Williams to eight years for the burglary (four-year middle term doubled pursuant to Pen. Code, § 1170.12, subd. (c)(1)) and a four-year term (two-year middle term doubled) for receipt of stolen property, which was stayed (Pen. Code, § 654).

## **II. DISCUSSION**

The sole issue on appeal is whether the trial court erred in admitting section 1101(b) evidence of the 2011 burglary. We find no error.

Section 1101, subdivision (a) prohibits admission of evidence of a person’s character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion. “[H]owever, . . . this rule does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person’s character or disposition.” (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393 (*Ewoldt*)). Section 1101(b) permits admission of “evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . . ) other than his or her disposition to commit such an act.” The admissibility of evidence of an uncharged offense “depends upon three principal factors: (1) the *materiality* of the fact sought to be proved or disproved; (2) the *tendency* of the uncharged crime to prove or disprove the material fact; and (3) the existence of any *rule* or *policy* requiring the exclusion of relevant evidence.” (*People v. Thompson* (1980) 27 Cal.3d 303, 315, disapproved on another point as stated in *People v. Scott* (2011) 52 Cal.4th 452, 470–471.)

“Evidence of uncharged offenses ‘is so prejudicial that its admission requires extremely careful analysis. [Citations.]’ [Citations.] ‘Since “substantial prejudicial effect [is] inherent in [such] evidence,” uncharged offenses are admissible only if they have *substantial* probative value.’ [Citation.] [¶] . . . We . . . examine whether the probative value of the evidence of defendant’s uncharged offenses is ‘substantially outweighed by the probability that its admission [would] . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.’ ( . . . § 352.)” (*Ewoldt, supra*, 7 Cal.4th at p. 404.) “We review the trial court’s determination for abuse of discretion, and view the evidence in the light most favorable to the trial court’s ruling.” (*People v. Edwards* (2013) 57 Cal.4th 658, 711.) We will not disturb the lower court’s exercise of discretion under section 352 unless that discretion was exercised in an arbitrary, capricious, patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Jones* (1998) 17 Cal.4th 279, 304.)

“Evidence of *intent* is admissible to prove that, if the defendant committed the act alleged, he or she did so with the intent that comprises an element of the charged offense. ‘In proving intent, the act is conceded or assumed; what is sought is the state of mind that accompanied it.’ ” (*Ewoldt, supra*, 7 Cal.4th at p. 394, fn. 2.) “The least degree of similarity (between the uncharged act and the charged offense) is required in order to prove intent. [Citation.] ‘[T]he recurrence of a similar result . . . tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state, and tends to establish (provisionally, at least, though not certainly) the presence of the normal, i.e., criminal, intent accompanying such an act . . . .’” [Citation.] In order to be admissible to prove intent, the uncharged misconduct must be sufficiently similar to support the inference that the defendant “probably harbor[ed] the same intent in each instance.” ’ ” (*Id.* at p. 402.)

Williams argues that the only material fact in issue at trial was identity, and that intent was not an issue. Thus, he contends, evidence of the 2011 burglary was prejudicial and cumulative. We assume, without deciding, that the prior burglary did not share sufficient distinctive marks with the current offense to have been properly admissible to establish identity. (*Ewoldt, supra*, 7 Cal.4th at p. 403 [evidence of uncharged misconduct admissible to prove identity when “the uncharged misconduct and the charged offense . . . share common features that are sufficiently distinctive so as to support the inference that the same person committed both acts.”].) The trial court implicitly found that it did not, and the jury was instructed that it could consider the evidence only to establish intent. The presumption is that limiting instructions are followed by the jury. (*People v. Waidla* (2000) 22 Cal.4th 690, 725.)

Although Williams insists that intent was not contested, the People cite *People v. Steele* for the rule that a “[d]efendant’s not guilty plea put[s] in issue all of the elements of the offense” and even if an element of the crime is conceded by the defendant at trial, “the prosecution is still entitled to prove its case and especially to prove a fact so central to the basic question of guilt as intent.” (*People v. Steele* (2002) 27 Cal.4th 1230, 1243.) This rule, however, applies to the court’s initial determination of whether the uncharged

misconduct evidence is probative of a material issue in the case. When weighing the probative value of the evidence against its undue prejudicial effect of the evidence, “[t]he trial court should consider whether the party objecting to the evidence *actually disputes* the fact for which it is offered in weighing the probative value against its prejudicial effect. If the fact is undisputed, the evidence has less true probative value.” (*Id.* at p. 1246, italics added; cf. *People v. Demetrulias* (2006) 39 Cal.4th 1, 14 [where prior crimes admitted to prove motive and intent, “[b]oth issues . . . were already in active dispute” when the court admitted the evidence].)

Neither the evidence nor defense argument place the issue of intent in serious dispute as to the person who entered the kitchen and took the laptop. Dirking testified without contradiction that this man did not know the residents of the Cotati house yet walked up to the front door, knocked and rang the doorbell, entered without permission, took a laptop from the kitchen, and fled with the laptop upon realizing someone was in the home. These facts raise the strong inference that this individual entered the house with an intent to steal, and no evidence of a different intent was presented at trial or argued by the defense. The issue of this individual’s felonious intent upon his entry to the house thus was not in active dispute at the trial. “[E]vidence of uncharged acts cannot be used to prove something that other evidence showed was beyond dispute; the prejudicial effect of the evidence of the uncharged acts outweighs its probative value to prove intent as it is cumulative regarding that issue.” (*People v. Lopez* (2011) 198 Cal.App.4th 698, 715 (*Lopez*); See also *People v. Balcom* (1994) 7 Cal.4th 414, 423 [“because the victim’s testimony that defendant placed a gun to her head, if believed, constitutes compelling evidence of defendant’s intent, evidence of defendant’s uncharged similar offenses would be merely cumulative on this issue” and thus would be barred under § 352].) The clear implication of the defense argument, however, was that this individual was not Williams.

Williams’s reliance on *Lopez* is therefore misplaced. In *Lopez*, the trial court admitted evidence of prior incidents of possession of stolen property and auto theft as “probative of intent” on a charge of residential burglary where an unidentified person had

entered the victim's home and stolen two purses. Shortly after the burglary, Lopez was seen in the company of another individual who was using the victim's credit card. (*Lopez, supra*, 198 Cal.App.4th at pp. 703–704.) There was no evidence that more than one person had committed the burglary. The reviewing court found that it was an abuse of discretion to admit evidence of the defendant's prior crimes to prove intent, because “[a]ssuming appellant committed the alleged conduct, his intent in so doing could not reasonably be disputed.” (*Id.* at p. 715.) Here, there remained an active issue regarding the intent of the second man who entered the house and who did not personally take the laptop. In closing argument, the prosecutor argued that even if Williams was this second man rather than the person who personally took the laptop from the kitchen (the perpetrator), he was liable as an aider and abettor. To establish aiding and abetting liability, the prosecution was required to prove that the second man knew, prior to or during the commission of the offense, of the perpetrator's unlawful purpose and intended by his actions to commit, encourage, or facilitate commission of the offense. (See *People v. Montoya* (1994) 7 Cal.4th 1027, 1039–1040 [distinguishing aiding and abetting from accessory after the fact liability under Pen. Code, § 32].) The trial court did not abuse its discretion in admitting evidence of Williams's prior burglary to prove the necessary knowledge and intent for aider and abettor liability.

Finally, even if we were to assume that admission of the prior burglary evidence was erroneous, we would find it harmless. Claims of erroneous admission of evidence are evaluated under the harmless error standard of *People v. Watson* (1956) 46 Cal.2d 818, 836. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 671; *People v. Vines* (2011) 51 Cal.4th 830, 867; *People v. Cudjo* (1993) 6 Cal.4th 585, 611 [explaining that “error [is] harmless [under *Watson*] if it does not appear reasonably probable that [the] verdict was affected”].) Williams (and Moore) were positively identified leaving the victim's residence with the stolen laptop and entering a vehicle identified by make and license number. Both were apprehended in that same vehicle approximately half an hour after the offense, with the stolen laptop in plain view in the car. It is not reasonably probable

that the jury would have reached a more favorable verdict even if jurors had no knowledge of Williams's prior burglary.<sup>3</sup>

### III. DISPOSITION

The judgment is affirmed.

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<sup>3</sup> Williams contends that the evidence of his guilt was “minimal and conflicting.” (See *People v. Lopez, supra*, 198 Cal.App.4th at p. 716.) We disagree.

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BRUINIERS, J.

WE CONCUR:

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JONES, P. J.

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NEEDHAM, J.