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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN TAPIA,

Defendant and Appellant.

E054763

(Super.Ct.No. RIF1100002)

OPINION

APPEAL from the Superior Court of Riverside County. Gary B. Tranbarger,  
Judge. Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Scott C. Taylor,  
Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Ivan Tapia guilty of one count of vehicle theft (Veh. Code, § 10851), and he subsequently admitted an allegation that he committed the offense while on bail, within the meaning of Penal Code section 12022.1.

On appeal, defendant argues that the trial court erred in admitting evidence of prior theft crimes under Evidence Code sections 352 and 1101, subdivision (b).<sup>1</sup> We affirm.

### FACTUAL AND PROCEDURAL BACKGROUND

On December 7, 2010, the victim was working as a valet attendant at a mall in Riverside. He had parked his black 1995 Honda Civic approximately 10 meters from where the valet stand was located. At around noon, the victim stepped into a nearby restroom to wash his hands. Upon his return, he noticed his car being backed out of a parking stall. He immediately ran to try to intercept it. When he caught up with it, he tried to open the driver's door, but it was locked. He and the thief looked at each other for a few seconds, but then the latter drove off. The victim then called 911. The victim later identified defendant as the person who drove off in his car.

Officer Christian Franco of the Riverside Police Department was assigned to the substation at the mall, and he arrived at the scene within a few minutes. He interviewed the victim and took a description of the suspect. The victim indicated that it was possible he would not be able to identify the suspect. Officer Franco also reviewed footage from the mall's surveillance cameras. The video showed the thief getting out of a white

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<sup>1</sup> All further statutory references will be to the Evidence Code, unless otherwise stated.

Chevrolet Tahoe with customized rims, and then getting into the victim's car. Additional footage showed the Tahoe drive by the valet stand and exit the parking lot. One could not discern the license plate number of the Tahoe nor the identity of the thief from the surveillance video.

Riverside Police Officer Brandi Merrill was assigned to follow up on this case. She reviewed the surveillance footage, and later found a vehicle matching the one used in this theft. This vehicle was registered to defendant and his wife. She then composed a six-pack photographic lineup, which included defendant's DMV picture. She presented this lineup to the victim, who immediately identified defendant as the man he saw driving his car.

Prior to trial, the prosecution sought to introduce evidence of prior uncharged offenses in which defendant rode in a white Chevrolet Tahoe with customized rims to the scene where he committed thefts. It offered to show under section 1101, subdivision (b), that three witnesses would testify that 11 months prior to the current offense, on two separate occasions within an hour of one another, defendant got out of the passenger seat of a white Chevrolet Tahoe with customized rims, and committed thefts. Defendant then got back into the passenger seat of the Tahoe and it drove away. Defense counsel objected to the admission of this evidence as being unduly prejudicial, especially in light of defendant's willingness to stipulate that his wife owned a white Chevrolet Tahoe.

The trial court opined that the evidence was relevant on the issue of identity of the thief, and that there were sufficient similarities between the prior incidents and the charged conduct to justify its admission. After the court indicated that the evidence

would be admissible, the parties entered into a stipulation that the following facts would be presented to the jury as true:

“1. On December 7, 2010, [defendant’s] wife owned and had registered in her name a white Chevrolet Tahoe.

“2. On January 31, 2010, approximately 11 months prior to this incident, the defendant was identified by three separate individuals as being involved with three separate theft crimes in Riverside, California, where the defendant was the passenger of a white Chevrolet Tahoe, and the same white Chevrolet Tahoe was the defendant’s getaway car that immediately left the scene of the crimes.”

#### DISCUSSION

Defendant contends that the trial court abused its discretion in admitting evidence of his prior use of a white Chevrolet Tahoe in committing acts of theft. He argues the evidence was unduly prejudicial, demonstrating he had a propensity to commit thefts. We find no abuse of discretion, nor do we find that admission of this evidence violated defendant’s federal constitutional rights and rendered his trial fundamentally unfair.

Under section 1101, subsection (b), evidence of prior offenses may be admitted to prove identity. We review the trial court’s determination of the admissibility of evidence of a prior uncharged crime under the abuse of discretion standard. (*People v. Cole* (2004) 33 Cal.4th 1158, 1195.)

In order to justify admission on this basis, “the uncharged misconduct and the charged offense must share common features that are sufficiently distinctive so as to support the inference that the same person committed both acts.” (*People v. Ewoldt*

(1994) 7 Cal.4th 380, 403.) Such is the case here. Although the details of the acts of theft were different, including the use of a weapon in the prior events, a distinctive car was used in both instances: not just an SUV or a white SUV, but a white Tahoe with customized rims. Also, the method of the two acts are similar: the Tahoe was being driven by an unknown third party; defendant getting out of the passenger's side and immediately proceeding to commit the act of theft; and then immediately leaving the scene either in the Tahoe or not.

Defendant further argues that even if evidence of the prior offense was admissible under section 1101, the court should have excluded it as being unduly prejudicial under section 352. Again, we disagree. We review the trial court's decision to admit evidence under section 352 for an abuse of discretion (*People v. Clark* (2011) 52 Cal.4th 856, 893), and again we find no abuse of discretion. The trial court carefully balanced the probative value of the evidence against its prejudicial effect. The person stealing the victim's car could not be clearly identified on the surveillance videos so that the identification of defendant by witnesses of the earlier crimes was most probative to prove identity here.

“For section 352 purposes, prejudice refers to evidence that uniquely tends to evoke an emotional bias against the defendant without regard to its relevance on material issues. [Citation.]” (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 650.)

Defendant argues that the evidence was prejudicial, but clearly any evidence that supports a finding of guilt is prejudicial. We cannot say that the evidence of the prior events was unusually detrimental. Moreover, the trial court mitigated the prejudice by

giving a limiting instruction that evidence of the uncharged crimes could only be considered in determining the identity of who stole the victim's car, not as evidence of defendant's bad character or propensity to commit crimes.

Assuming arguendo that the trial court abused its discretion in admitting evidence of defendant's prior offenses, the error would not require reversal. Even if the evidence of the prior offenses is disregarded, ample evidence of defendant's guilt remains. Accordingly, it is not reasonably probable that a result more favorable to defendant would have resulted had the evidence of the prior crime not been admitted. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.