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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BAOQIN HAO,

Defendant and Appellant.

G046208

(Super. Ct. No. 11CF1471)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W. Michael Hayes, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton and Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Baoqin Hao was convicted of unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)). She argues the trial court wrongfully excluded evidence of her “bizarre behavior” which she claims was relevant to the issue of specific intent. We conclude the court did not abuse its discretion and therefore affirm.

I

FACTS

On the evening of June 4, 2011, Benito Ramirez parked his 1989 Toyota Camry across the street from his Santa Ana home. Ramirez was trying to sell the vehicle, and he had placed a red “for sale” sign in the window. He locked the car and took the key with him. In the car’s center console was another Toyota key for a different vehicle, a Toyota pickup truck. When Ramirez came out of his home the next morning to leave for work, the car was missing, which he reported to the police. Later in the day, the car was returned to the same spot from which it had disappeared, with no damage but an empty gas tank. Ramirez did not know defendant and had not given her permission to drive his car.

Olga Bolanos, one of Ramirez’s roommates, saw defendant driving Ramirez’s car at about 10:30 a.m. Bolanos recognized defendant, who lived nearby, and saw her park the car in front of the residence. Bolanos and a number of other people approached defendant, one of whom said they were going to call the police, and defendant asked them not to. Defendant then walked away.

Bolanos was familiar with defendant. On one occasion, during the daytime, defendant had walked into the unlocked front door of the house where Bolanos rented a room and asked Bolanos to give defendant her phone. This behavior struck Bolanos as “strange.” When Bolanos told her to leave, defendant responded: “No. This is not your house. You cannot kick me out because this house does not belong to you.” Shortly thereafter, defendant left. On other occasions, Bolanos had seen defendant do strange things, “because sometimes she wasn’t well.” Bolanos agreed that defendant’s strange

behavior was “a regular occurrence,” although she did not know if it was due to alcohol, drug use, or something else. She had also heard that defendant would sit in parked cars in the neighborhood. Further, she believed there was domestic violence between defendant and the man she lived with, because on occasion defendant would leave her house crying or asking for help.

Officer Nancy Martinez, a forensic specialist who responded to the scene, found a key in the console that was not the vehicle’s key, but would nonetheless start the car, even though it only fit halfway into the ignition. She observed no damage to the vehicle and found no signs of forced entry. This older model of car, however, was easily unlocked without a key by using a shaved key or slim jim.

Officer Ricardo Velasquez, who also responded to the scene, overheard defendant telling another individual that she did not steal the vehicle because she brought it back. Velasquez subsequently arrested defendant and read her an advisement pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436. Defendant agreed to speak with Velasquez. She told him that around 3:00 a.m., she was walking outside when she noticed the vehicle was unlocked. She went inside the vehicle, found the key in the center console, and because she was interested in buying a car like that one, took it for a drive. She told Velasquez she had had an argument with her roommate and did not want to return home, so she parked and slept in the vehicle, returning it at 10:30 the next morning. Velasquez characterized some of defendant’s answers to his questions as “nonsensical.”

On August 24, 2011, the Orange County District Attorney filed an information charging appellant with unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)).

At trial, in addition to the police officers, Ramirez, and Bolanos, Carlos Ortiz also testified. He was another resident of the home where Bolanos and Ramirez lived, and stated that he saw defendant return the car on the morning of June 5th. He, along with Bolanos, his mother, and his fiancée, saw defendant exit the car and walk

toward her home. Ortiz saw defendant yell at his mother, stating that the car had been loaned to her.

Defendant also testified. She stated that around 7:00 p.m. on June 4, she left her house because her boyfriend was drinking and they had started fighting. She saw Ramirez's car on the street and testified that one of the back doors was open and a for sale sign was in the window. The sign offered the car for \$1,900, and this upset her because she had sold a 1997 Toyota Paseo the year before for \$950. She reached into the car through the back door which she stated was open, and unlocked the driver's side door. Sitting in the driver's seat, she saw the key on the console and started the car with it. She then turned the car off and went to the house of a friend.

The friend dropped her back off between 2:30 and 3:00 a.m. She opened Ramirez's car again and tried to sleep, but ultimately decided to drive the car to visit someone who owed her money in El Monte. She drove there and slept in the car until the man arrived at his office. She did not collect the money but instead drove back to Santa Ana.

When asked about Bolanos's testimony that she sometimes got into people's cars, defendant said that was true. She also said that she sometimes did "crazy things," including asking them to take her to their house or to marry her. She did not know why she did such things. With respect to Ramirez's car, she testified that she was not sure if there was an owner, that perhaps it came out of a junk body shop and nobody wanted it. She believed the entire incident might have been the result of her neighbors, the residents of Ramirez's house, trying to trap her. All she wanted to do was drive the car. She conceded that she knew if she had the car, the person who owned it would not be able to use it while she was driving it.

At the conclusion of trial, the jury found defendant guilty. The court sentenced defendant to two years in prison for the offense, and imposed a concurrent term of two years for a prior conviction of stalking (Pen. Code, § 646.9, subd. (b)), for

which defendant was on probation at the time of the instant crime. Defendant now appeals.

II

DISCUSSION

At trial, in addition to Ortiz’s testimony regarding the day of the incident, the defense also wanted him to testify that defendant “sometimes acted in a bizarre manner.” Specifically, defense counsel wanted Ortiz to testify about an incident in which defendant walked into his house, demanded to use the phone, and refused to leave unless they threatened to call the police. According to the defense, such incidents were relevant to defendant’s intent, along with her behavior and the neighbors’ knowledge of her.

The prosecution objected, arguing that only what Ortiz had witnessed was relevant, and prior behavior was not pertinent to specific intent in this instance. Thus, the prosecution requested the testimony be excluded pursuant to Evidence Code section 352.¹ The court stated it had “performed the balancing test under 352 and determined that the probative value is insufficient, that the prejudicial value, given the state of the case, is outweighed” and limited Ortiz’s testimony to events on the day of the incident.

Under section 350, only relevant evidence is admissible. “The test of relevance is whether the evidence tends “logically, naturally, and by reasonable inference” to establish material facts” (*People v. Harris* (2005) 37 Cal.4th 310, 337.) Further, section 352 gives the trial court discretion to exclude evidence “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (§ 352.) “Where, as here, a discretionary power is statutorily vested in the trial court, its exercise of that discretion ‘must not be disturbed on appeal *except* on a showing that the court exercised its

¹ Subsequent statutory references are to the Evidence Code unless otherwise stated.

discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]’ [Citation.]” (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1124-1125; *People v. Cain* (1995) 10 Cal.4th 1, 33.)

Vehicle Code section 10851, subdivision (a) 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”

The jury was instructed with CALCRIM No. 1820. In order for the jury to find defendant guilty under that instruction, they were required to conclude that defendant took or drove someone’s vehicle without their consent, and she “intended to deprive the owner of possession or ownership of the vehicle for any period of time.” Thus, defendant’s intent to deprive the owner is specific and separate from the intent to drive the vehicle. (See, e.g., *People v. Moon* (2005) 37 Cal.4th 1, 26.)

The evidence defendant claims was wrongfully excluded here was that she at times behaved in a bizarre manner, including sitting in people’s cars without permission or entering their homes without knocking. First, these facts were simply not relevant to whether, at the time she took Ramirez’s car, defendant had the intent to deny him temporary possession. Second, the facts about defendant’s behavior had already come into evidence through Bolanos’s testimony as well as the testimony of defendant herself. Repeating essentially the same facts one more time was cumulative, and raised the possibility of confusing the jury as to the actual elements of the crime in this case.

In her reply brief, defendant argues that “the trial court did not conduct the required balancing [under section 352], and had it done so, it would have concluded that the evidence[] had to be admitted.” This is belied by the record itself, which specifically states, “The court has performed the balancing test under 352 and determined that the probative value is insufficient, that the prejudicial value, given the state of the case, is

outweighed” Defendant attempts to parse the court’s words to claim the court did not properly satisfy the “weighing” requirement, or explicitly state on the record all of the reasons for its ruling.

Defendant, however, does not cite any authority stating that evidentiary rulings under section 352 are required to be accompanied by detailed statements explaining the court’s reasoning. If the decision of a lower court is correct on any theory of law applicable to the case, the judgment or order will be affirmed regardless of the correctness of the grounds on which the lower court reached its conclusion. (*Belair v. Riverside County Flood Control Dist.* (1988) 47 Cal.3d 550, 568.) Here, the court would have been justified in excluding the evidence simply on relevance grounds, thereby rendering any weighing and balancing under section 352 unnecessary.

Defendant has failed to demonstrate error, and we find no abuse of discretion.

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.