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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHARLEE ESPINA, Defendant and Appellant.	B231739 (Los Angeles County Super. Ct. No. BA369238)

APPEAL from a judgment of the Superior Court of Los Angeles County. Victor H. Greenberg, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven E. Mercer and Kathy S. Pomerantz, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Charlee Espina (defendant) appeals his conviction of insurance fraud and grand theft. Defendant contends that the verdicts were not supported by substantial evidence and there was instructed error. We disagree and affirm the judgment.

BACKGROUND

1. Procedural background

The amended information charged defendant in count 2 with insurance fraud in violation of Penal Code section 550, subdivision (a)(4).[1] In count 9, defendant was charged with receiving stolen property in violation of section 496, subdivision (a); and in count 10, defendant was charged with grand theft in violation of section 487, subdivision (a). The trial court later renumbered the counts to 1, 2, and 3, respectively.

On March 2, 2011, a jury found defendant guilty of counts 1 and 3, insurance fraud and grand theft. The trial court sentenced defendant forthwith, and dismissed count 2 upon motion by the prosecution. As to each count, the trial court placed defendant on four years formal probation upon various terms and conditions, and ordered him to pay mandatory fines and fees and to provide DNA and fingerprints. Defendant filed a timely notice of appeal.

2. Prosecution Evidence

In mid-October 2009, Jaime Garcia Vasquez (Vasquez)[2] reported his Chevrolet Tahoe truck stolen. Glendale Police Officer Brandon Idolor testified that he took the report, obtained the registration information, and confirmed Vasquez's identity from his driver's license. Officer Idolor testified that he also confirmed that Vasquez was the registered owner of the truck.

Vasquez and defendant were coworkers who for two years had worked a weekend shift together.

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

[2] Vazquez has also been mentioned in the record as Jaime Vasquez Garcia.

A claim was submitted on October 19, 2009, to Farmers Insurance (Farmers or insurance company) for the loss of the truck. Farmers fraud investigator Kevin Letson (Letson) testified that he reviewed the claims file, which included a record of Vasquez's telephone interview. Vasquez reported that he had received only one key when he purchased the truck, had not made copies, and still had the key. Letson testified that on December 3, 2009, Farmers paid $5,134.56 for the loss of the truck, and on January 27, 2010, an additional payment of $1,097.50 was made due to the custom paint job, stereo equipment, and other special items. Letson explained that the terms of the insurance policy provided that if the truck were recovered, the insured agreed to return either the vehicle or the insurance proceeds.

Letson testified that in the course of his career he had examined hundreds of vehicles recovered by the insurance company. In his experience if stolen vehicles were recovered they were usually completely stripped, stripped and burned, or intact with only the stereo or rims missing.

Detective Lorenzo Barbosa testified that on March 5, 2010, he received a tip that someone was trying to dispose of a stolen GMC truck. Detective Barbosa was given a cell phone number which he called, and spoke to a man who identified himself as Charlee, later identified as defendant. When Detective Barbosa pretended to be a buyer, defendant admitted that the truck was stolen and was the subject of insurance fraud. Detective Barbosa assured defendant that he intended just to use the truck's parts. Defendant told Detective Barbosa that he had given the truck to "Carlos," and would try to reach him in order to make the sale. In a later conversation, defendant passed the telephone to a man who identified himself as Carlos, and Detective Barbosa offered to buy the truck for $1,500. Defendant agreed to the price and said he would call when the truck was ready. Defendant and Carlos called back a few days later and arranged to meet. Defendant cancelled the meeting, claiming that Carlos was in San Francisco, but called Detective Barbosa the next morning at 3:40 a.m. Defendant wanted to meet right away, explaining that there would be fewer witnesses at that time of the day.

Detective Barbosa arrived at the meeting place, an underground parking garage located about a mile from defendant's residence, after receiving convoluted directions from defendant by cell phone as the detective drove. Defendant arrived soon afterward, accompanied by Jesus Carlos Aquino. The two men jump-started the truck, which had been parked in the garage. Detective Barbosa ran the truck's license plate number and confirmed that it was the same vehicle reported stolen by Vasquez and that the registered owner was Farmers. Detective Barbosa located the key to the truck and observed no damage to the ignition area.

After defendant was arrested he told Detective Barbosa that because the insurance company had already paid the owner's claim, the owner wanted to make the truck disappear. Detective Barbosa recovered defendant's cell phone and records, and found the detective's calls in the call log, along with his undercover name and the Spanish word for disappear.

Detective Barbosa interviewed defendant and a recording of the interview was played for the jury. In the recorded interview, defendant admitted knowing that the truck was stolen. Initially he denied knowing the name of the truck's owner but then admitted it was a coworker who he later identified as Vasquez. Vasquez had told defendant that "they" had stolen the truck, "[b]ut it showed up." At first defendant denied knowing how or where the truck had reappeared, but then said Vasquez told him that someone had noticed it on Normandie Avenue and had recognized it by its "rims and everything."

Defendant claimed that Vasquez called and said he wanted to "get rid of" the truck and asked defendant what he should do. Defendant made several suggestions, such as returning the car to the insurance company, leaving it on the street for the police to find, or calling a junk yard. Vasquez rejected the suggestions because the insurance company would "ask for their money back" and a junk yard would want papers.

Defendant alternately claimed that he helped Vasquez as a favor and expected no payment; that he was expecting a commission of $1,500, the amount that Detective Barbosa agreed to pay him, and that Vasquez promised to pay him $100 for storing or destroying the truck. Defendant claimed that someone other than Vasquez -- he did not

know who -- drove the truck to defendant's house, where defendant parked it in his driveway for two or three weeks. Thereafter someone he did not know drove or towed the truck to the garage.

Defendant acknowledged that it was wrong to store a stolen truck and to commit insurance fraud. At the end of the interview, when Detective Barbosa commented that it would have been a crime to have the truck destroyed, defendant replied, "Yeah but I know it's a crime but like have you never steal [*sic*] something?"

Defendant presented no evidence.

DISCUSSION

I. Standard of Review

When a criminal conviction is challenged as lacking evidentiary support, "the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578; see also *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) We must presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) "The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.]" (*Ibid*.) We do not reweigh the evidence or resolve conflicts in the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

II. Aiding and abetting insurance fraud

Defendant contends that the evidence was insufficient to establish that a false or fraudulent claim was made to Farmers or that he aided and abetted Vasquez in the filing of the claim.

Defendant was convicted of violation of section 550, subdivision (a)(4), which makes it "unlawful to . . . aid, abet, solicit, or conspire with any person to . . . [¶] . . . [¶] [k]nowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion of a motor vehicle . . . ."

"[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and [with] (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime." (*People v. Beeman* (1984) 35 Cal.3d 547, 561.)

"Whether a person has aided and abetted in the commission of a crime ordinarily is a question of fact. [Citations.] Consequently, '"all intendments are in favor of the judgment and a verdict will not be set aside unless the record clearly shows that upon no hypothesis whatsoever is there sufficient substantial evidence to support it."' [Citation.]" (*In re Lynette G*. (1976) 54 Cal.App.3d 1087, 1094.) Factors relevant to determining whether substantial evidence supports a finding that defendant was an aider and abettor include companionship and conduct before or after the offense. (*Id*. at pp. 1094-1095.)

A. Fraudulent claim

Defendant argues that the prosecution presented no credible evidence that the truck had not, in fact, been stolen at the time Vasquez presented the insurance claim, and thus failed to prove that the claim was fraudulent when presented.

We agree with respondent, however, that substantial circumstantial evidence supports a finding that the truck was never actually stolen from Vasquez. In his interview with Detective Barbosa, after claiming not to know how or where the truck reappeared, defendant asserted that Vasquez told him that someone had noticed it on Normandie Avenue and recognized it by its "rims and everything." Letson testified that in his experience most stolen cars were completely stripped, or stripped of rims, stereo equipment, or other components. Vasquez's truck, however, still had its distinctive rims. Further, Vasquez kept the only key to the truck and the ignition area had not been damaged. The jury could reasonably infer from such facts that the truck had never been stolen but was driven, using Vasquez's key, to a place where it was hidden while the claim was processed.

B. Continuing fraud

The prosecution proceeded on the theory that defendant aided and abetted Vasquez's presentation of a false or fraudulent claim in violation of section 550, subdivision (a)(4). Defendant contends that because the evidence did not show that the crime of presenting a fraudulent claim was ongoing at the time of his involvement, he could not have been found guilty as an aider and abettor.

Relying on the general rule that a conspiracy to commit insurance fraud usually terminates upon receipt of the proceeds of the policy, defendant argues that the crime was complete no later than the payment by Farmers on the two claims. (See *People v. Hardy* (1992) 2 Cal.4th 86, 143 [for purposes of coconspirator hearsay exception]; *People v. Leach* (1975) 15 Cal.3d 419, 436 [same]; *People v. Saling* (1972) 7 Cal.3d 844, 847, 852 [same].) The first of the two claims was presented on October 19, 2009, and the second on December 2, 2009. Defendant admitted to Detective Barbosa that he had stored the truck for two or three weeks before their first telephone conversation on March 5, 2010, which would place the start of defendant's admitted involvement sometime in February 2010. Thus, under defendant's theory, the crime would have been complete no later than the second payment by Farmers in January 2010, before defendant's admitted involvement.

The crime of presenting a fraudulent claim is ordinarily complete the moment the claim is presented to the insurance company, regardless of whether payment is ultimately received. (See *People v. Zanoletti* (2009) 173 Cal.App.4th 547, 559.) The prosecutor argued at trial, however, that the "fraud was ongoing because . . . Farmers still [did] not have access to that vehicle. . . . And even though [defendant] did not actually call in to Farmers and make that fraudulent claim, he assisted by promoting the activity and keeping the fraud ongoing [knowing] the claim was false or fraudulent." While acknowledging that all the elements of insurance fraud as defined in subdivision (a)(4) of section 550 had been completed when the claims were presented to Farmers, respondent makes the same argument here -- that the fraud was ongoing.

In *People v. Montoya* (1994) 7 Cal.4th 1027 (*Montoya*), the California Supreme Court explained that "the temporal threshold for establishing guilt -- a fixed point in time at which all elements of the substantive offense are satisfied so that the offense itself may be considered to have been '*initially* committed' rather than simply attempted -- is *not* synonymous with the 'commission' of that crime for the purpose of determining aider and abettor liability. [Citation.]" (*Id*. at p. 1040.) Thus, "in determining the duration of an offense, for the purpose of aider and abettor liability, the court must take into account the nature of the interests that the penal provision is intended to protect, emphasizing in this regard that both the victim of a crime and a potential aider and abettor frequently will not perceive an offense as 'completed' simply because all elements necessary to establish guilt already have been satisfied. . . ." (*Ibid*.; see also *People v. Coop*er (1991) 53 Cal.3d 1158, 1164 & fn. 7.)

In taking into account the interests section 550 is intended to protect, respondent argues that the Legislature expressed concern about the "great economic harm and personal suffering to the people of California" when it increased penalties in 2000. (Stats. 2000, ch. 867, § 1.) Defendant's assistance to Vasquez thus furthered the harm to the interests section 550 was intended to protect. Emphasizing the point of view of the victims of insurance fraud, we note that Vasquez's insurance policy provided that if the truck were recovered, the insured agreed to return either the vehicle or the insurance proceeds. While Vasquez still had the ability to comply with the terms of the insurance policy, he continued by means of fraud and with defendant's assistance, to defeat Farmer's ability to benefit from its insurance contract. From a victim's perspective, the crime would not be "'completed' simply because all elements necessary to establish guilt already [had] been satisfied" when Vasquez presented the claim, but would continue until defendant succeeded in placing the truck permanently out of reach. (*Montoya*, *supra*, 7 Cal.4th at p. 1040.) Indeed, defendant acknowledged to Detective Barbosa that destroying the truck would be stealing, thus indicating that the offense was not completed. (See *ibid*.)

We agree with respondent that for purposes of aider and abettor liability under the facts of this case, Vasquez's insurance fraud was ongoing at the time defendant aided and abetted him by storing the truck and attempting to sell it for parts.

C. Vasquez's continuing role

Defendant contends that the evidence was insufficient to prove that it was Vasquez whom defendant was assisting as an aider and abettor at the time he spoke to Detective Barbosa about selling the truck.

Defendant's contention has no merit. Defendant admitted to Detective Barbosa that it was Vasquez who asked him to help him "get rid of" the truck. Defendant admitted that he either expected payment from Vasquez for storing the truck or he did it as a favor to Vasquez. When defendant spoke to Detective Barbosa, the truck was located near defendant's home. Defendant claimed that he did not know who drove the truck to his driveway or who took the truck to the garage. However, defendant's evasiveness about the identity of the owner of the truck made it obvious to Detective Barbosa that defendant was protecting the owner. It is likely that the person defendant was protecting was Vasquez. He and Vasquez had a close coworker relationship since 2007, working a route together. Although defendant told Detective Barbosa that "Carlos" would be selling the truck, defendant arranged the meeting and accompanied Carlos to the truck's location just one mile from defendant's home. A reasonable inference was that defendant was aiding Vasquez in getting rid of the truck, as agreed.

III. Grand theft

Defendant contends that substantial evidence did not support a finding that he took the property of another, either as a direct perpetrator or as an aider and abettor. Defendant's contention is without merit.

Theft is committed by any "person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly,

by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property . . . ." (§ 484.)[3]

Theft "is committed by every person who (1) takes possession (2) of personal property (3) owned or possessed by another, (4) by means of trespass and (5) with intent to steal the property, and (6) carries the property away. [Citations.] The act of taking personal property from the possession of another is always a trespass unless the owner consents to the taking freely and unconditionally or the taker has a legal right to take the property. [Citation.] The intent to steal or *animus furandi* is the intent, without a good faith claim of right, to permanently deprive the owner of possession. [Citation.] And if the taking has begun, the slightest movement of the property constitutes a carrying away or asportation." (*People v. Davis* (1998) 19 Cal.4th 301, 305, fns. omitted.) For purposes of larceny, it need not be shown that the "owner" had title to the property; it is sufficient if the property is taken from the person with the right to possession. (*People v. Price* (1941) 46 Cal.App.2d 59, 61-62.)

Defendant contends that he could not have aided and abetted the theft of the truck because there was insufficient evidence that Vasquez was involved in the attempt to sell the truck or that he took actual or constructive possession of the truck when it was allegedly found on Normandie Avenue. Defendant makes no specific argument with regard to aiding and abetting, but merely incorporates by reference his earlier argument that Vasquez did not commit insurance fraud. Defendant does not make clear how his earlier argument applies to this contention. In any event, as we rejected the earlier argument, we reject this contention as well. The evidence clearly supported the conclusion that Vasquez committed grand theft. He exercised constructive possession of the truck when he moved it from Normandie Avenue and asked defendant to make it "disappear." (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) It was evident that Vazquez knew then that the truck belonged to another (Farmers) and that he had no

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3 Grand theft is the theft of any automobile or of personal property with a value exceeding $950. (§ 487, subds. (a), (d)(1).) Defendant does not contend that theft of the truck would not be grand theft.

intention of surrendering it to them. It follows that defendant aided and abetted Vasquez with this crime as it was clear that defendant knew of Vasquez's unlawful purpose of keeping both the insurance proceeds and the truck (or the proceeds of its sale), as well as defendant's own participation in the unlawful sale by acting as a middle man with Detective Barbosa.

Defendant next argues that he could not be convicted as a direct perpetrator because it was not shown that he took possession of the truck and because he thought Vasquez owned the truck. Defendant argues that the prosecution failed to prove that he did not have the owner's consent to take the truck.[4] Similarly, defendant argues that the evidence was insufficient to prove that he intended to permanently deprive the owner of the truck, because he did not know that Farmers was the owner. Defendant concludes that the evidence established nothing more than his belief that he was selling Vasquez's truck with permission.

We reject defendant's characterization of the evidence. Vasquez told defendant that the insurance company had paid the claim and that he needed to make the truck disappear. Defendant admitted storing the truck in his driveway at Vasquez's request to help him "get rid of" it. Although defendant told Detective Barbosa that Carlos was selling the truck, it was located with a dead battery, in the early morning in a garage about one mile from defendant's residence. The jury could reasonably infer that defendant knew that it was the insurance company, not Vasquez, that had the right to the possession of the truck and that defendant intended to permanently deprive the insurance company of the truck when he acted to facilitate its sale to Detective Barbosa.

Defendant's statements strengthen these inferences. In particular he admitted that it was wrong to store a stolen truck and to commit insurance fraud. When Detective Barbosa commented that it would have been a crime to have the truck destroyed,

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[4] For the first time on appeal, defendant suggests that the prosecution was required to establish a "chain of custody" for the truck. Chain of custody relates to physical evidence submitted to the jury at trial. (*People v. Baldine* (2001) 94 Cal.App.4th 773, 779.) The truck was not in evidence at trial. Moreover, objections to chain of custody are forfeited if not made at trial. (*Ibid.*)

defendant replied, "Yeah but I know it's a crime but like have you never steal [*sic*] something?"

We conclude that substantial evidence demonstrated that defendant stole the truck by taking possession of it knowing that he had no legal right, with the intent to permanently deprive the insurance company of its possession. (See *People v. Davis*, *supra*, 19 Cal.4th at p. 305.)

IV. CALCRIM No. 2000

When the trial court instructed the jury with CALCRIM No. 2000, it omitted the definition of "claim" contained in that instruction.[5] Although he did not object to the omission at trial, defendant now argues that the trial court had a sua sponte duty to define "claim." The omitted language explains: "A person claims, makes, or presents a claim for payment by requesting payment under a contract of insurance for a loss."

We observe that "[w]hen, as here, a phrase 'is commonly understood by those familiar with the English language and is not used in a technical sense peculiar to the law, the court is not required to give an instruction as to its meaning in the absence of a request.' [Citation.]" (*People v. Rowland* (1992) 4 Cal.4th 238, 270-271.) A contention similar to defendant's was rejected under the predecessor to section 550, former section 556. (*People v. Teitelbaum* (1958) 163 Cal.App.2d 184, 212-213.) "The word 'claim' is one of common meaning and is defined by Webster's International Dictionary, Second Edition, unabridged, as follows: 'To ask for, or seek to obtain, by . . . right, or supposed

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5 The trial court instructed the jury as follows: "The defendant is charged in count 1 with insurance fraud committed by fraudulent claim, in violation of Penal Code section 550(a). To prove that the defendant is guilty of this crime, the People must prove that, one, the defendant falsely or fraudulently claimed payment for a loss due to theft of a motor vehicle. Two, the defendant knew that the claim was false or fraudulent. And, three, when the defendant did that act, he intended to defraud. Someone intends to defraud if he or she intends to deceive another person either to cause a loss of money or something else of value or to cause damage to a legal, financial, or property right. For the purposes of this instruction, a person includes a corporation or a business. It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts."

right; to demand as due.' It is to be assumed that the Legislature in using the word 'claim' intended it to have its common meaning and intended to proscribe the presentment of any false demand under a policy of insurance irrespective of the form of that demand." (*Id*. at p. 212.)

As defendant did not object in the trial court to the missing language, and he does not contend that the instruction was an incorrect statement of law as far as it went, he has forfeited the issue raised by failing to request clarification. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1011-1012.)

Further, defendant's claim of ineffective assistance of counsel has no merit, as he has not shown that he would have achieved a more favorable result had counsel requested the missing language. (See *Strickland v. Washington* (1984) 466 U.S. 668, 694; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1126.) Jurors are presumed to be intelligent. (*People v. Lewis* (2001) 26 Cal.4th 334, 390.) It is inconceivable that any rational juror would not know the meaning of "claim" or even "insurance claim." It is thus improbable that the omission affected the verdict.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST