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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL YOUNG, Defendant and Appellant.	B271589 (Los Angeles County Super. Ct. No. BA408042)

APPEAL from a judgment of the Superior Court of Los Angeles County, Edmund W. Clarke, Jr., Judge. Affirmed.

Christopher Nalls, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Michael Young appeals from the judgment entered following his convictions by jury on two counts of grand theft from the person (counts 1 & 2; Pen. Code, § 487, subd. (a)[1]) each with findings the offense involved a taking exceeding $500,000 (§ 186.11, subd. (a)(2)) and prosecution of the count began within four years of the date the crime should have been discovered (§§ 801.5, 803, subd. (c)(1)), and with findings as to counts 1 and 2 appellant took property of a value exceeding $1.3 million (§ 12022.6, subd. (a)(3)) and $65,000 (§ 12022.6, subd. (a)(1)), respectively. We affirm.

FACTUAL SUMMARY

There is no dispute appellant committed grand theft from the person (§ 487, subd. (a)) against John Zabel (count 1) and Ellen Bruck (count 2), satisfying the above specified monetary provisions. We set forth below the facts pertinent only to the statute of limitations issue in this case.

1. People's Evidence.

a. *Count 1: Victim John Zabel.*

The evidence at appellant's February 2016 trial established that John Zabel was a certified public accountant (CPA) and worked for Columbia Pictures, Sony Pictures Corporation, then Mandalay Pictures, until 2002. In 2002, he became an investment capital consultant in the motion picture industry.

Zabel testified as follows. In the spring of 2007, Zabel's friend, a banker, told Zabel that Val Hill was a rising writer, director, and producer seeking capital for a film company. Zabel met with Hill and appellant, and appellant was represented to be a fundraiser for the venture. After several meetings, it became

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1 Subsequent section references are to the Penal Code.

clear appellant would be unable to raise funds for the venture. Appellant later consulted with Zabel on a number of appellant's personal and career issues. This tended to endear appellant to Zabel. Appellant suggested ways the two could do business.

In about June 2007, appellant helped Zabel refinance his home and discussed ways for Zabel to invest proceeds from the refinancing. Zabel trusted appellant primarily because Zabel's banker friend had referred appellant to Zabel regarding Hill's venture. Appellant also appeared to be successful. He had a well-furnished high-rise office for his company, Colonial First Capital Corporation, in the mid-Wilshire area. He rode in a limousine, wore expensive clothes, and, during discussions, conveyed expertise regarding financial transactions. Appellant told Zabel appellant was such an accomplished real estate investor he had difficulty buying properties for reasonable prices because they would increase when people found out appellant was a prospective buyer.

(1) *The TPG Project.*

In about June 2007, and before the above refinancing was completed, appellant and Zabel repeatedly met and discussed Zabel investing in a real estate investment project appellant was leading called the Tujunga Property Group (TPG). It involved buying three adjoining houses, razing them, and building approximately 18 condominium units. TPG handled only this project. Jerry Castrovinci was present during the first meeting. Zabel understood Castrovinci was appellant's employee.

Appellant gave to Zabel informational documents pertaining to the project. The total capital to develop the project was represented to be $6.5 million, with $5.5 million already raised. Zabel understood appellant and Charles Rochelin, a

professional basketball player, had invested $3.5 million. Rochelin was appellant's partner in TPG.

Appellant told Zabel the houses had already been purchased. The only remaining opportunity to invest was available to Zabel. Zabel asked appellant who else had invested. Appellant indicated confidentiality restrictions precluded him from disclosing investors' identities.

Appellant showed Zabel a budget package and a document entitled, "Creation of Real Estate Wealth." The latter document reflected various levels of financing participation. Only one level, the "senior partnership" level, was available. This level required a $1 million investment and, because it would have a limited 20 percent return, Zabel would be one of the first persons, if not the first person, to receive a return. Appellant and Rochelin would be paid last.

Appellant showed Zabel descriptions of the units, potential sales prices, land acquisition costs, and steps being undertaken to develop and build the units. Appellant also showed Zabel a construction budget, and potential sales and returns. Appellant took Zabel on a tour of other projects appellant was involved in around the valley, and appellant took Zabel to one of Rochelin's development projects. Appellant showed Zabel deeds to the properties in the TPG project.

Zabel invested a total of $1 million. In particular, in the summer of 2007, on September 7, 2007, and on November 15, 2007, he invested $200,000, $550,000, and $250,000, respectively. The money was to be kept in the company bank account and used only to construct the condominiums. The project was supposed to start in the fall of 2007.

Around September 2007, Zabel asked appellant what was happening with TPG. Zabel testified, "initially the story was" there was a feasibility hearing, and appellant was talking with a local congressperson who "had some issues." Appellant also said the project was delayed because of planning issues or local concerns. He further said around September 2007 (and June 2008) the project was stalled by the permit process.

(2) *Additional Investments and the TPG Tax Return.*

In January or February 2008, Zabel invested $150,000 (hereafter, the second investment) in appellant's business that provided hard money loans. The second investment's agreement provided Zabel could, on two occasions, withdraw $25,000 at any time, with notice. In July 2008, Zabel made a separate $175,000 short-term investment in appellant's real estate and other activities. Zabel testified that, in 2008, the market was starting to collapse globally and appellant convinced Zabel to make this last investment. In "late August, September" of 2008, Zabel performed a cursory review of a draft of a TPG tax return "signed by a CPA."

(3) *The Castrovinci Call.*

In November 2008, Castrovinci telephoned Zabel. Zabel testified Castrovinci "basically informed me I should not rely on any representations [appellant] was making. Effectively, [appellant] was a liar." During trial, the prosecutor asked Zabel if Castrovinci said anything else. Zabel replied, "It was very vague. I just recall him saying, 'Do you have any money invested with this guy? You better be very careful." Zabel also testified Castrovinci said, "Just be careful, make sure your ducks are in a row."

(4) *The $25,000 Withdrawal Request.*

In response to Castrovinci's call, Zabel, in November 2008, gave appellant notice Zabel was withdrawing $25,000 from the second investment. Zabel testified he guessed he gave notice within a "couple days" after Castrovinci's call. Zabel expected to receive the money in mid-December of 2008. Appellant responded he had received the request and would take care of it. After giving the withdrawal notice but before mid-December of 2008, Zabel began making investigative calls to people like Hill to obtain information about appellant's operations.

In mid-December of 2008, appellant did not give Zabel the requested $25,000. Zabel contacted appellant to get an explanation. In email exchanges, appellant said he could not repay Zabel because the bank had pulled the credit line for appellant's business. Zabel was shocked someone of appellant's reported wealth and stature had difficulty repaying $25,000.

Zabel also testified appellant gave "lots of stories" about the $25,000. Referring to email exchanges, Zabel testified that every time he reached out to appellant, "[appellant] had an explanation of something that was going on." Zabel took the explanations at face value, but began questioning matters and asked for more supporting information. Zabel explored what other information he could obtain to determine what was going on with appellant's business operations.

During trial, the prosecutor asked Zabel if he had had any suspicions about what was going on at the end of 2008. Zabel testified, "I was concerned that obviously now I had a [telephone] call that he's not to be trusted. He's now not made payment on something he should have been able to make payment on. So I'm starting to talk to other people that he's done business with.

Mr. Hill is the first one." Zabel then testified that that led to discussions with others, including Ellen Bruck. Castrovinci had told Zabel about Bruck. Zabel was having these conversations with people in "very late 2008," "probably early 2009."

(5) *Zabel's Review of the TPG Tax Return.*

At some point after appellant failed to give Zabel the requested $25,000 payment in mid-December of 2008, Zabel reviewed the above TPG tax return more critically. The return reflected, inter alia, money had been spent for planning and development fees for the architect, engineer, and planning officer. That included $100,000 for "City of Los Angeles Planning." At the time Zabel reviewed the return, he had no reason to question whether those monies had been spent. However, the return indicated total capital for the project was $1.118 million, when it should have said $6.5 million.

(6) *Events After Zabel Reviewed the Tax Return.*

After reviewing the tax return, Zabel knew there was something dreadfully wrong and there was a big problem. During cross-examination, appellant's counsel asked Zabel if he thought he had been lied to. Zabel replied, "I had been misled, yes." Zabel had relied on appellant's representations and the alleged fact $6.5 million had been invested. Appellant's counsel asked if Zabel thought his money was taken, and Zabel replied, "All I knew was money was not where it should be, or appear [*sic*] to be. And this [tax return] is a draft, so all I know is this told me something was amiss." Zabel had no access to TPG's bank records.

The expenses listed on the return referred to matters Zabel could investigate. For example, Zabel concluded there must have been project plans with the City of Los Angeles. However, he

initially took no action because his primary focus was running his sole proprietorship business. As Zabel testified, "I'm a sole practitioner, and if I don't continue to devote my time and attention to my business, I don't have a business. I don't have an income." At some point, Zabel reviewed information about the architect because his name was on plans Zabel had initially reviewed.

Zabel confronted appellant and asked him where the other $5 million was. Appellant said he had repaid some of the other investors first, before Zabel. Zabel was very upset because he was supposed to be paid first. Zabel also testified that in late December 2008, appellant told Zabel all money, other than Zabel's $1 million, had been returned to the other investors.

Appellant's counsel asked Zabel if he accused appellant "of lying, of being a fraud." Zabel replied, "I don't recall what I said to him exactly, but certainly I was concerned now about the legitimacy of my returns." Zabel asked appellant something like, "how can you repay other people before you pay me?" Zabel denied knowing in December 2008 that the TPG project was dead.

In late December 2008 or January 2009, Zabel spoke with Hill about Hill's relationship with appellant. During cross-examination of Zabel, appellant's counsel asked if Zabel told Hill that Zabel believed appellant had defrauded Zabel. Zabel testified he did not recall and "I told [Hill] I believed that the money in my project, in my investments, was not where it should be." Appellant's counsel asked if that was fraud, and Zabel replied, "I'm not a lawyer."

Appellant's counsel later asked Zabel, "if the money wasn't there, that's . . . a lie. That's a fraud, correct?" Zabel replied,

". . . I've been through, . . . many civil litigations. And what I always think is fraud never seems to turn out to be. So at that point I'm not sure, other than I had not been given the right information many times by [appellant]." Zabel testified, "every time I asked [appellant] for an explanation, I got one of the – not once did he say, '[Zabel], I stole your money.' So I always had an expectation what he was telling me had some semblance to truth."

On February 1, 2009, Zabel sent appellant an email pertaining to a meeting(s) scheduled for the following Wednesday or Thursday. Zabel said in the email that his objectives were "1. To get a detailed understanding of how you are proposing to repay the money you owe me. [¶] 2. To get a detailed accounting of what the funds were spent on. [¶] 3. To review the current state of affairs on TPG and to get a month by month analysis of the bank accounts to see the flow of funds from the time I initially invested." In the email, Zabel indicated his willingness to participate in the meetings was in no way "a waiver of any of my rights regarding your breach of the two agreements between us."

On February 3, 2009, appellant sent a reply email refusing Zabel's request for a meeting. The email said "Charles" and appellant were the "[p]rincipals listed on TPG" and "there is nothing in the agreement that I've read or signed requiring detailed confidential company bank statements and month by month analysis to [be] given to anyone other than the principals of the company." The email further said, "I understand your legal position regarding my breach of contract on two agreements . . . ."

(7) *The Kensington Law Group.*

In early 2009, appellant said that, because the credit line was unavailable and he was having cash flow issues, he had developed a new mortgage relief business called Kensington Law Group (Kensington). The housing market had collapsed, everyone was refinancing, and his business would help people refinance. Kensington was portrayed as one of the businesses appellant would start in an effort to solve his cash issues and repay Zabel.

Zabel researched the viability of Kensington. He met with appellant several times, including at a presentation in Orange County in January 2009. Zabel heard the presentations by appellant, but Zabel had done his own research, including contacting friends in the banking community, and Zabel concluded Kensington would not be viable.

During cross-examination by appellant, Zabel denied accusing appellant of fraud. After determining Kensington would not be viable, Zabel began examining his property investment more carefully. Despite Zabel's requests, appellant did not provide specific information to Zabel regarding TPG's funds or investors. Zabel did not have access to, nor was he given, any TPG bank records at that point.

(8) *Zabel's Visit to the Planning Commission.*

On February 27, 2009, Zabel went to the city planning commission. He wanted to see the TPG project plans. Zabel had seen the related expense listed on the tax return, knew the first stage of the project was to get planning commission approval, and wanted to see what was filed with the city. The tax return indicated plans had been filed, so before Zabel arrived at the planning commission, he believed they had been filed. He also

believed the money in the project was in a bank account in the name of TPG.

During trial, the prosecutor asked if, from the time of the Castrovinci call to the time Zabel went to the planning commission, Zabel believed appellant had defrauded him. Zabel replied, "I believed I had a civil claim, just from the moment the $25,000 had not been repaid, but I wasn't sure what else I had."

The questioning continued: "Q Did you have any information about where your money was at that time? [¶] A No. Again, every time I asked a question, [appellant] came back with a story. And until I investigated those stories, I didn't know what was going on. [¶] Q During that time period, did you think that [appellant] had done something criminal? [¶] A No."

When Zabel inquired at the planning commission, the city informed him no plans regarding TPG had been filed with the city. No permits had been applied for regarding the project. Zabel testified he "started really now to question . . . what was going on with the project, and anything [appellant] had to say." Appellant never gave Zabel bank statements reflecting $5 million on deposit.

(9) *Additional Facts.*

At some point in mid-December of 2008, after appellant failed to give Zabel the $25,000 payment but before Zabel filed a complaint with the district attorney's office on April 10, 2009,[2] Zabel asked Rochelin what happened to Zabel's money. Zabel testified, "[Rochelin] said [appellant] had redirected it out of the accounts." Zabel never received the $25,000.

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[2] As discussed *post*, April 10, 2009, was not the date on which prosecution began in this case; that date was February 21, 2013.

Zabel had had discussions with the district attorney's office and knew there was a statute of limitations issue. The prosecutor did not tell Zabel the statute of limitations had run or that Zabel had discovered the fraud too early. Zabel denied the statute of limitations issue impacted his memory of what had happened.

b. *Count 2: Victim Ellen Bruck.*

Ellen Bruck testified as follows. During the period from December 2006 through January 2007, Castrovinci, appellant's employee at Colonial First, was Bruck's neighbor. Bruck met appellant through Castrovinci. Around that time, Bruck refinanced her house and met with Castrovinci and appellant to discuss investing proceeds from the refinancing. Appellant told Bruck that appellant and Castrovinci were going to buy three houses in order to develop a multi-family building. In January 2007, Bruck invested $100,000 in TPG. Bruck's investment was for two years and called for a 12 percent return. Bruck had not previously invested in real estate so it was a "whole new area" for her, but she trusted appellant and Castrovinci.

Around June 2007, Bruck spoke with Castrovinci and learned he no longer worked for appellant. Bruck was concerned because Castrovinci had been her contact person regarding her money. Although she did not think that, under her agreement, she could get her money back before January 2009, she nonetheless asked Castrovinci if she could get it back, and he said no.

In the fall of 2008, Bruck repeatedly tried to call appellant regarding her investment. Around January 23, 2009, appellant met with Bruck. Appellant said he did not have Bruck's money because "the bottom had fallen out of the real estate market,"

Colonial First no longer existed, and he was forming a new company called the Kensington Group. Appellant told Bruck the Kensington Group venture would allow him to repay her. At no time before or in January 2009 was Bruck shown bank account statements reflecting where her money went. Bruck had no idea what happened to her money in January 2009.

Bruck repeatedly contacted appellant from January 2009 through September 2009. Bruck testified their conversations about her money were "[j]ust that he didn't have any money, and that was it. And that he was always working on something else." After appellant told Bruck the "real estate market had fallen apart," she did not inquire about the project and did not think there was one, so she did not believe that she could get her money back. In March 2009, Zabel met with Bruck and gave her information about what might have happened to her money.

2. Defense Evidence.

Appellant and his mother each testified that on December 19, 2008, Zabel met with appellant at the Kensington meeting and accused him of stealing Zabel's money.[3]

3. Jury Instructions.

The court instructed the jury regarding the statute of limitations by advising, "The date that controls you, in this case, when the criminal proceedings started, . . . was February 21, 2013." The court told the jury not to confuse that date with the date "people have said they went to the D.A.'s office and . . . filed a complaint."

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[3] Appellant's mother was a People's witness but the court effectively allowed appellant to treat her as a defense witness on this issue.

During the final charge to the jury, the court, using CALCRIM Nos. 1804, 1805, and 1806, instructed the jury on theft by false pretense, theft by trick, and theft by embezzlement, respectively. The court, using CALCRIM No. 1861, instructed that appellant was being prosecuted on two counts of theft under the above three theories, the jury could not convict appellant of theft unless the jury agreed the People had proved appellant committed theft under at least one theory, but the jury did not have to agree on the same theory.

The court also instructed on the statute of limitations using CALCRIM No. 3410. The instruction stated, "A defendant may not be convicted of grand theft from John Zabel or grand theft from Ellen Bruck unless the prosecution of the count for that alleged theft began within four years of the date that the crime should have been discovered. The present prosecution began on February 21, 2013. [¶] A crime *should have been discovered* when the victim was aware of facts that would have alerted a reasonably diligent person in the same circumstances to the fact that a crime may have been committed."

DISCUSSION

There Was Sufficient Evidence Prosecution of Counts 1 and 2 Was Not Barred by the Statute of Limitations.

Appellant claims the jury's findings regarding the statute of limitations were supported by insufficient evidence. We reject the claim. There is no dispute the applicable statutes of limitations are set forth in section 801.5, and 803, subdivision (c).[4] In *People v. Zamora* (1976) 18 Cal.3d 538 (*Zamora*), a jury

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[4] At all pertinent times, section 801.5, stated, "Notwithstanding Section 801 or any other provision of law, prosecution for any offense described in subdivision (c) of Section

convicted the defendants of, inter alia, two counts of grand theft (receipt of insurance proceeds) and the jury's verdicts implied findings the acts of grand theft could not have been discovered more than three years before the indictment in that case. The defendants contended the charges were barred by the statute of limitations. (*Id.* at pp. 542, 543, 565.)

Zamora later observed, "The crucial determination is whether law enforcement authorities or the victim had actual notice *of circumstances sufficient to make them suspicious of fraud thereby leading them to make inquiries which might have revealed the fraud*." (*Zamora, supra,* 18 Cal.3d at pp. 571-572.) On the facts in that case, *Zamora* concluded, inter alia, there was insufficient evidence supporting the implied findings. (*Id.* at pp. 565-566.)

"[I]t is the discovery of the crime, and not just a loss, that triggers the running of the statute. '[D]iscovery of a loss, without discovery of a criminal agency, is not enough.' [Citation.]" (*People v. Lopez* (1997) 52 Cal.App.4th 233, 246, fn. 4 (*Lopez*).) In *People v. Crossman* (1989) 210 Cal.App.3d 476, the court cited analogous sister-state authority for the proposition that discovery had not occurred where knowledge of facts " 'would have only created a suspicion of *wrongdoing*.' " (*Id.* at p. 481, italics added.) Similar principles apply where, as here, the issue is whether a crime should have been discovered.

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803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later." Section 803, subdivision (c)(1), describes the offense of "[g]rand theft of any type, . . ."

Even if circumstances exist that may arouse suspicion in a reasonable victim, subsequent reassurances by the defendant to allay the victim's suspicion may operate to delay the discovery of the crime. (See *Garrett v. Perry* (1959) 53 Cal.2d 178, 181-182; *Hartong v. Partake, Inc*. (1968) 266 Cal.App.2d 942, 966; *Brownlee v. Vang* (1965) 235 Cal.App.2d 465, 476.)

At trial, the People have the burden to prove by a preponderance of the evidence that a criminal proceeding is timely under the statute of limitations. (*People v. Wong* (2010) 186 Cal.App.4th 1433, 1444; *Lopez*, *supra,* 52 Cal.App.4th at p. 248.) We review the sufficiency of that evidence under the substantial evidence standard. (*Zamora*, *supra,* 18 Cal.3d at p. 565; *Wong*, at p. 1444.) Our power begins and ends with the determination whether there is substantial evidence, contradicted or uncontradicted, to support the judgment. (*People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1181-1182.)

There is no dispute that if there is substantial evidence the victims should not have discovered before February 21, 2009, the respective crimes committed against them, the prosecution of counts 1 and 2 was timely commenced within the statute of limitations. In the present case, Zabel had, as early as "late August, September 2008," the draft of the TPG tax return signed by a CPA, and Zabel performed a cursory review of the return. The return reflected expenditures for various fees. Even after the Castrovinci call and appellant's failure to honor the $25,000 withdrawal request, Zabel carefully reviewed the return and had no reason to question those expenditures. The jury reasonably could have concluded Zabel had no reason to question these TPG expenditures during his earlier, cursory review of the return.

However, the return indicated total capital for TPG was $1.118 million, when it should have been $6.5 million. It appears that, during Zabel's cursory review of the return, he did not note this discrepancy. When Zabel later carefully reviewed the return, he noticed the discrepancy. He testified this was a big problem and he knew something was dreadfully wrong. However, he also testified he was aware the return was a draft, "so all I know is this told me *something* was amiss." (Italics added.) The fact a CPA "signed" the return did not establish the extent of the CPA's involvement, if any, in verifying the information in the return.

The jury could have reasonably concluded that, even if Zabel had noticed the discrepancy during his cursory review of the return, the discrepancy would not have been sufficient to make Zabel suspicious appellant had committed a *crime*, i.e., *theft* (with its theft-related criminal mental state) regarding the TPG project. Instead, the jury reasonably could have concluded that, during Zabel's cursory review of the return, he believed appellant was a successful businessman with expertise in financial transactions, appellant accurately had conveyed the total capital as $6.5 million, the draft was tentative and erroneous, and it would later be amended to correctly reflect $6.5 million in total funding. The jury could have also reasonably concluded that appellant gave Zabel plausible explanations for the delay in the TPG project in September 2007.

The Castrovinci call occurred later, in November 2008. Castrovinci effectively called appellant a liar. However, Castrovinci was also vague. He provided no specific information. Castrovinci did not state a theft had occurred or was occurring. Castrovinci did not tell Zabel to try to get his money back. Instead, Castrovinci told Zabel to be "very careful." Despite these

revelations, Zabel believed Castrovinci's statements to be nothing more than misstatements of a disgruntled person. However, Zabel continued to investigate. The jury could have reasonably concluded the circumstances prior to, and including, the Castrovinci call were not sufficient to make Zabel suspicious appellant had committed criminal theft or fraud.

Appellant later failed to honor Zabel's request to withdraw $25,000 from the second investment, but the jury could have reasonably concluded this was sufficient only to make Zabel suspicious appellant had breached the second investment contract, not committed a crime, i.e., theft. Also, the failure to honor the withdrawal request did not breach the TPG agreement. Every time Zabel contacted appellant about the failure, appellant offered an explanation. Zabel's February 1, 2009 email exchange with appellant appears to demonstrate that as late as that date, Zabel viewed appellant's actions as civil matters, i.e., as breaches of contracts. The jury could have reasonably concluded the circumstances prior to, and including, appellant's failure to honor the withdrawal request were not sufficient to make Zabel suspicious appellant had committed the crimes of theft or fraud.

After appellant failed to honor the request to withdraw $25,000, Zabel more carefully reviewed the TPG tax return. We have already concluded that the jury could have reasonably determined that a cursory review of the return would not have provided facts sufficient to make Zabel suspicious appellant had committed a crime, i.e., theft regarding the TPG project. We similarly reach that conclusion as to appellant's later careful review of the return. The fact that, during the period between the two reviews, Castrovinci made his vague call and appellant

failed to honor the withdrawal request pertaining to the *second agreement*, do not alter that conclusion.

Zabel later confronted appellant, asking him about the $5 million discrepancy in the TPG account. Appellant did not admit to having committed a theft. Instead, appellant told Zabel appellant had paid other investors first. This was contrary to the terms of the TPG agreement and, again, may have supported a breach of contract action, but the jury could have reasonably concluded that nothing to this point had provided facts sufficient to make Zabel suspicious appellant had stolen Zabel's money. Appellant provided explanations and Zabel "always had an expectation what [appellant] was telling me had some semblance to truth." Again, Zabel's February 1, 2009 email to appellant appears to demonstrate Zabel treated this matter as a noncriminal contractual matter. Zabel testified that from the time the $25,000 withdrawal request was not paid, to the time he arrived at the planning commission, he "believed he had a civil claim" but was unsure what else he had.

The jury could have reasonably concluded the circumstances existing before Zabel went to the planning commission were not sufficient to make Zabel suspicious appellant had committed theft or fraud. In other words, in light of the above discussion, there was substantial evidence supporting the jury's implied findings that, prior to February 27, 2009, Zabel did not have actual notice of circumstances sufficient to make him suspicious that theft or fraud had occurred.

Zabel made inquiries of various people (e.g., Hill, Castrovinci, and Bruck) whom the jury could have reasonably concluded would have had little or no knowledge of what was happening. The jury could have reasonably concluded that,

despite repeated inquiries from Zabel, appellant provided no specific information but only reassurances. One important thing that might have facilitated Zabel's investigative efforts was access to appellant's records. However, Zabel did not have access to TPG's bank records. In appellant's February 3, 2009 email, he refused to give Zabel "detailed confidential company bank statements and month by month analysis." Appellant thus had superior knowledge of the facts and controlled a major means by which Zabel could have discovered the theft.

On February 27, 2009, Zabel went to the planning commission and determined no plans had been filed and no applications had been submitted for the TPG project, directly contradicting appellant's representations that the project had been stalled due to the permit process. The TPG tax return had indicated plans had been filed. The return reflected a $100,000 expenditure for "City of Los Angeles Planning." The jury could have reasonably concluded these facts were sufficient to make Zabel suspicious that appellant's earliest representations about TPG were false and appellant had committed theft.

The jury also could have reasonably concluded Bruck trusted appellant and was inexperienced concerning real estate investment. Indeed, she was sufficiently inexperienced that she prematurely asked for her money back, knowing her request was premature. The jury could have reasonably concluded the first time she should have discovered the theft of her property was when she spoke to Zabel in March 2009.

In sum, there was substantial evidence the victims should not have discovered appellant's criminal activity before February 21, 2009. Therefore, substantial evidence supported

the jury's implied findings that prosecution of this case was timely under the statute of limitations.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.