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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. BLANCA PEREZ, Defendant and Appellant.	B139381 (Los Angeles County Super. Ct. No. BA175489)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norman Shapiro, Judge. Affirmed.

Kenneth F. Weston for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Blanca Perez appeals from the judgment entered after she was found guilty in a court trial of two counts of uttering a false smog certificate (Veh. Code, § 4463, subd. (a)(2)) and two counts of unauthorized access to computer systems with the intent to defraud (Pen. Code, § 502, subd. (c)(1)). She had been charged with several codefendants, none of whom is party to this appeal. The court found her guilty on a theory of aiding and abetting.

On this appeal, defendant contends the evidentiary record does not support her convictions. We disagree and therefore affirm the judgment.

STATEMENT OF FACTS

Defendant's convictions are based upon the fact that she aided and abetted others in generating fraudulent smog certificates on two vehicles. The two vehicles had been presented to defendant and her accomplices by Saul Ortega, an undercover investigator for the Bureau of Automotive Repairs. The vehicles had been disabled by the agency so that neither could pass the smog certification examination.

The pertinent facts are the following. Ortega was assigned to investigate whether smog repair shops were operating properly. On August 4, 1997, an unidentified woman outside of the office of the Department of Motor Vehicles told Ortega that he could obtain a smog certificate for $80 at Specialist Auto Repair even if the car did not pass the test. Ortega, who had been furnished with a 1980 Chevrolet Silverado, drove the vehicle to Specialist Auto Repair where he spoke to defendant and one of her codefendants, Jesus Rivera. Without inspecting Ortega's vehicle, defendant said it would cost $80 to obtain a smog certificate. After Rivera hooked the car up to a smog machine, defendant told Ortega the car would not pass and that it would cost $400 to repair the car. At that point, a person identified only as Mike told Ortega he could obtain a smog certificate for $140. Mike wrote some

information down on a business card which he gave to Ortega. After a brief conversation, Ortega left.

A week later, Ortega returned to Specialist Auto Repair. Ortega drove a Buick LeSabre. Defendant and Rivera approached him. Ortega said he needed a smog check on the car. Defendant said the cost would be $80. After Rivera tested the car, defendant told Ortega the car did not pass the test; that it needed a carburetor; and that it would cost $200 to repair. She assured Ortega the car would pass the test after the repairs. Ortega then handed defendant the business card Mike had given him a week earlier. Defendant looked at the card, went into the office, and returned with Jose Tejada.

Defendant introduced Ortega to Tejada. Defendant told Tejada "take care of it." Ortega followed Tejada into an office. Tejada told Ortega he would help him obtain a smog certificate for $140 but that he needed the registration slip for the car. Ortega gave Tejada the requested document. Ortega told Tejada that he also needed a smog certificate for the Chevrolet Silverado. Tejada said that would cost an additional $140. Tejada took Ortega to Lea Auto Repair where Tejada said the certificates would be ready the next day. Ortega gave Tejada registration slips for the Buick LeSabre and the Chevrolet Silverado and paid him $140 for one vehicle. Tejada told Ortega to telephone the next day and ask if the "tamale" was ready. Ortega did not leave either vehicle with Tejada.

The next day, Ortega spoke with Tejada who told him the smog certificate was ready. Ortega picked up the smog certificate for the Buick LeSabre and paid $140 Tejada for a smog certificate for the other vehicle. The following day, Ortega picked up the second smog certificate. Because Ortega had not left either vehicle at the repair shop, it was, of course, impossible to either test or repair the vehicles. The smog certificates had, in fact, been generated by testing other cars.

After codefendant Rivera was arrested, he told an investigator that defendant paid her friends for illegal referrals for smog checks.

Based upon the above facts, the prosecution argued defendant was an aider and abettor. The court convicted her of two counts of knowingly accessing a computer with intent to defraud (Pen. Code, § 502, subd. (c)(1)) and two counts of uttering a false smog certificate (Veh. Code, § 4463, subd. (a)(2)). The first two counts were based upon the entering of information on the computer to obtain fraudulent smog certificates for the Chevrolet Silverado and Buick LeSabre and the latter two counts were based upon the issuance of the fraudulent smog certificates for the vehicles.

DISCUSSION

On this appeal, defendant advances several arguments as to why she could not be found liable as an aider and abettor. None of the arguments has merit.

A. *Penal Code Section 502, subdivision (c)(1)*[1] *Convictions*[2]

Defendant presents two arguments as to why the court erred in convicting her of two counts of knowingly accessing a computer with intent to defraud.

The first argument is based upon the fact that her codefendant Rivera, who was jointly charged with her on those two counts, was acquitted of the charges.[3] From this, she claims: "The reasonable interpretation of the evidence was that all that Rivera did, as an employee of the Specialist Auto Repair shop owned by

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[1] That portion of the statute makes it a crime if one "[k]nowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data."

[2] All statutory references in this section are to the Penal Code.

[3] He was convicted of two other counts.

[codefendant] Ronald Camacho, was to test some cars and report that they would not pass the smog program without repairs. [She] in assisting that action of the employee could not have committed a crime either." The argument is meritless.

While defendant is correct that the court found there was insufficient evidence to tie Rivera to Camacho, that finding does not assist defendant. The prosecution theory was not that defendant aided and abetted Rivera. Instead, it was that defendant aided and abetted Jose Tejada. Tejada was the individual whom defendant told "take care of it" after Ortega's car failed the smog test and who thereafter helped Ortega obtain the two fraudulent smog certificates. While Tejada was apparently jointly charged with defendant,[4] he was not a party to the trial. The record does not indicate the outcome of the charges filed against him and the parties' briefs shed no light on that issue. Nonetheless, given Ortega's testimony about the conduct of both defendant and Tejada, the court's acquittal of Rivera is simply not relevant to defendant's convictions.

Defendant next argues that she could not have properly been found guilty because the charging statute was amended after she was convicted. The amendment upon which she relies added subdivisions (h) and (i) to section 502.

Subdivision (h)(l) provides that subdivision (c)(l) -- the charging allegation in this case and the crime for which defendant was convicted -- "does not apply to punish any acts which are committed by a person within the scope of his or her lawful employment." Putting aside the fact that this amendment became effective several years *after* defendant committed the crimes, there is absolutely no evidence to support its application to this case.

To the extent that defendant relies upon subdivision (h)(2), she errs because it merely limits the reach of a portion of the charging statute inapplicable to this

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[4] The information jointly charged six individuals. One was Ninrod Umana Tejada. A brief colloquy between the prosecutor and the court suggests this is the person identified in Ortega's testimony as Jose Tejada.

case. Subdivision (h)(2) reads, in relevant part: "Paragraph (3) of subdivision (c) [of section 502] does not apply to penalize any acts committed by a person acting outside of his or her lawful employment, . . . provided that the value of supplies or computer services . . . which are used does not exceed an accumulated total of one hundred dollars ($100)." This new subdivision has no application to this case. Defendant was charged with and convicted of violating paragraph (1) of subdivision (c), not paragraph (3) of subdivision (c). (The latter makes it a crime if one "[k]nowingly and without permission uses or causes to be used computer services.")

Lastly, defendant's reliance upon subdivision (i) is similarly unavailing. It provides: "No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs." As defendant was not prosecuted under any of the three designated paragraphs, subdivision (i) is inapplicable.

B. Vehicle Code section 4463, subdivision (a)(2) Convictions

Defendant contends the evidence is insufficient to support her convictions for aiding and abetting the uttering of the two false smog certificates issued to Ortega. She argues she was merely present at Auto Specialist Repair, was not involved with the smog testing, did not recommend Lea Auto Repair where Tejada took Ortega to obtain the false smog certificates, and was not present at Lea Auto Repair. Defendant's argument is not persuasive.

As a reviewing court, we are precluded from re-evaluating the evidence. We can only decide whether the record contains substantial evidence to support the trial court's decision to convict defendant. (*People v. Perry* (1972) 7 Cal.3d 756, 785.) In that regard, we must view the evidence in the light most favorable to the People and presume every fact in support of the judgment that the court could have

reasonably deduced from the evidence. (*People v. Farnam* (2002) 28 Cal.4th 107, 142-143.)

In light of these principles of appellate review, we reject defendant's attack on the sufficiency of the evidence. The evidence showed more than her mere presence at Auto Specialist Repair. After Ortega was informed his vehicle had failed the smog test, defendant told Tejada to "take care of it." Tejada thereafter helped Ortega purchase the fraudulent smog certificates at Lea Auto Repair. In addition, the evidence established defendant paid her friends to refer others to her for the purchase of fraudulent smog certificates. From these facts, a reasonable trier of fact could conclude defendant had aided and abetted Tejada in uttering the false smog certificates. In that context, the fact that she was not present at Lea Auto Repair where the false smog certificates were generated is not dispositive.

DISPOSITION

The judgment is affirmed.

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HASTINGS, J.

We concur:

EPSTEIN, Acting P.J. CURRY, J.