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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY ALLEN SHEKELL,

Defendant and Appellant.

D059301

(Super. Ct. No. SCD226796)

APPEAL from a judgment of the Superior Court of San Diego County, Laura Parsky, Judge. Affirmed.

A jury convicted defendant and appellant Jeffrey Allen Shekell of one count of grand theft of personal property (Pen. Code, §§ 487, subd. (a), 504a; embezzlement of leased property; all further statutory references are to the Penal Code unless noted). The court found true a related allegation he committed the offense while on bail pending judgment in another felony offense (§ 12022.1, subd. (b)). Imposition of sentence was suspended and Shekell was placed on probation for three years, conditioned on serving 180 days in county jail, and restitution orders were made.

On appeal, Shekell contends the trial court inappropriately gave a pattern instruction on theft by embezzlement, as modified to add the statutory language of section 504a. He argues this instruction did not properly pertain to the specialized facts underlying this theft charge, nor to his good faith defense, and that the trial court failed in its sua sponte duty to give an instruction on the actual elements of the offense, more precisely focusing upon its fraudulent intent requirement. (*People v. Eddington* (1962) 201 Cal.App.2d 574, 578-579 (*Eddington*).)

Shekell made no request for such a specific instruction, nor did he pursue one proposed by the prosecutor that included a fraudulent intent requirement. He nevertheless argues the trial court failed to pinpoint this particular issue about the required findings about his mental state while he held the property, in light of his original rights under the lease to exclusive possession of it. Absent such a request, his claims of error have been waived. (*People v. Mayfield* (1997) 14 Cal.4th 668 (*Mayfield*).) In any case, the record shows the instructions given fully covered all the elements of the embezzlement offense and there was no prejudice. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2008, Shekell needed to store industrial equipment after he lost his lease to his auto repair shop. Assisted by his daughter Brandi, Shekell entered into 10 lease agreements for 10 upgraded security storage containers, with the company Coronado Mobile Storage (CMS or the lessor). The owner of CMS, Geoffrey Davis, accepted Shekell's payment of two months' rent on the containers and a delivery fee, and delivered

the units to Shekell's business premises in El Cajon. The containers were each valued at about \$2,200-\$2,700.

According to the lease, Shekell was obligated to pay \$95 rent per month per container (raised from the original rent of \$85), for as long as he needed them and paid the rent. The lessor retained the right to approve any request to move the containers, and after a few weeks, it authorized Shekell to move them to his home in Lakeside, which he did.

After a few more weeks, without asking for permission from the lessor, Shekell had the containers moved to a "crane yard" or storage lot in Santee. In July 2008, Shekell returned five of the containers. In August 2008, he fell behind on his payments to CMS for the five containers he kept. During the summer of 2008, he was being treated for a hip injury and was taking prescription pain medications, including morphine.

From October through November 2008, Shekell made \$2,000 in payments by credit cards. In November, Shekell talked to Davis about bringing his account up-to-date within a week or two. When asked about the location of the containers, Shekell refused to provide an address.

From January through March 2009, Shekell made some rent payments but remained in arrears. After not paying from April through June 2009, he told Davis he would be catching up soon. Shekell had hip replacement surgeries in May and June 2009, and was again prescribed pain medications and morphine.

In June 2009, the lessor sent Shekell a notice that he was about to be sued in civil court for back rent and nondisclosure of the location of the units, but it did not follow through. Davis sent him telephone and fax messages stating that his relocation of the containers and failure to pay rent amounted to theft. In response, Terri Shekell (Shekell's wife) explained to the lessor's employee, David Rahill, that Shekell was having surgery, but she was planning to send a \$500 check the following day and another \$500 the following week.

At the beginning of July, Shekell was suffering from infections and was rehospitalized. He sent \$300, and later \$600 more, bringing the total he had paid to about \$6,850. He told the lessor the containers were located on a storage lot somewhere between Santee and El Cajon, near Woodside.

In August 2009, Shekell promised to make another payment and to provide an address for the containers, which he said were located somewhere near North Woodside and Mission Gorge Road. Rahill drove around the area trying to find the containers, but was unable to do so. No further payments were made.

From August through October 2009, the lessor continued to attempt to contact Shekell in different ways, but could not do so. The lessor got in touch with him in late October, telling him he was 11 months and over \$5,000 in arrears. Shekell responded that he was attempting to get a bank loan to pay off the debt. He asked several friends to help him move his belongings out of the containers, but no one was available. Those

friends later testified they noticed his speech was slurred and he seemed "messed up" for months after his surgeries.

From October 2009 through March 15, 2010, the lessor's staff kept trying to contact Shekell and on one call, Shekell hung up on them. After March 14, Shekell had no usable fax number or e-mail address, and did not answer his home phone. He still owed \$5,984.68 in unpaid rent. His wife asked relatives to help unload the containers, and by June 2010, they did so.

Shekell filed for bankruptcy. On behalf of the lessor, Davis attended a bankruptcy hearing on June 16, 2010, and questioned Shekell about the location of the containers. No answer was given, but later that month, Shekell's attorney provided Davis a map with the location of the storage containers (a rural lot in Lakeside). The lessor recovered the five containers, which were empty and showed wear and tear, and was able to lease them out again.

On June 28, 2010, an information charged Shekell with grand theft of over \$400. (§§ 487, subd. (a); 504a.) An amended information filed November 4, 2010 included allegations that the thefts took place from June 10, 2009 through June 30, 2010. In preparation for trial, Shekell was examined by a psychiatrist, Clark Smith, who is an expert on the effects of overuse of pain medication, and who found Shekell to have disorganized thought processes.

Trial began on January 4, 2011. The prosecutor presented testimony from Davis and the lessor's other employees. Shekell's defense witnesses included family and friends testifying about his numerous medical and financial difficulties, and his requests for help.

Dr. Smith testified about impairment of decisionmaking ability through overuse of pain medication, such as Shekell's medical history and examination showed to him.

In closing argument, defense counsel focused on a voluntary intoxication defense, about how Shekell believed in 2009-2010 that he would soon be able to set matters right with the lessor, and how his ongoing pain medication levels unavoidably interfered with his ability to properly handle his business affairs.

Following numerous conferences on instructions (to be discussed *post*), the matter was sent to the jury. Shekell was found guilty of embezzlement and the court made a true finding on the additional allegation. He was sentenced to three years of formal probation, along with 180 days in county jail and restitution fines and orders. He appeals.

DISCUSSION

Shekell contends the trial court erred in failing to give, sua sponte, a special jury instruction on embezzlement that would have expressly required the jury to make a finding of his essential "intent to injure or defraud the owner of the fraudulently removed, concealed or disposed of goods." (*Eddington, supra*, 201 Cal.App.2d 574, 578-579; section 504a in relevant part reads, "*Every person who shall fraudulently remove, conceal or dispose of any goods . . . leased or let to him by any instrument in writing . . . is guilty of embezzlement*"; italics added.)

We first take note that Shekell does not challenge the sufficiency of the evidence to support the verdict on embezzlement. He does not deny that his duties under the lease included making timely payments and obtaining permission to move the storage containers, but he breached the lease when he stopped making payments and changed and

concealed the location of the containers. However, he argues his circumstances of falling behind on lease payments, but keeping the containers, were not adequately presented to the jury on the issue of any essential intent to fraudulently deprive the lessor of its property rights.

We next set forth standards for deciding if prejudicial instructional error occurred, and outline authorities that interpret these statutes. After summarizing the discussions on instructions that took place at trial, we determine if the objections Shekell made to the pattern instruction preserved these claims on appeal, or if invited error occurred, or if he has waived these claims. In any event, we examine the record to decide if the instructions as a whole sufficiently identified all essential elements of the charged offense.

I

APPLICABLE STANDARDS

A. Basic Rules for Assessing Alleged Instructional Error

" 'In criminal cases, even in the absence of a request, a trial court must instruct on general principles of law relevant to the issues raised by the evidence and necessary for the jury's understanding of the case.' " (*People v. Anderson* (2011) 51 Cal.4th 989, 996-997 (*Anderson*).) This duty may include giving to the jury the essential elements of a charged offense. (*People v. Breverman* (1998) 19 Cal.4th 142, 155.)

With respect to a claimed defense, the trial court's sua sponte instructional duty also extends to " 'instructions on the defendant's theory of the case, including instructions 'as to defenses 'that the defendant is relying on . . . , if there is substantial

evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case.' " " " " " (Anderson, supra, 51 Cal.4th at pp. 996-997; Breverman, supra, 19 Cal.4th at p. 157; see 5 Witkin, Cal. Criminal Law (4th ed. 2012) § 705, p. 1086.)

"When considering a challenge to a jury instruction, we do not view the instruction in artificial isolation but rather in the context of the overall charge. [Citation.] For ambiguous instructions, the test is whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction." (Mayfield, supra, 14 Cal.4th at pp. 777-778; see People v. Posey (2004) 32 Cal.4th 193, 218 [it is a legal issue if jury instructions are correct statements of law].)

B. Pinpoint Instructions

An instruction that focuses on the relationship of particular facts to the elements of a charged crime is considered to be a pinpoint instruction, which does not invoke the trial court's sua sponte duty to instruct. (People v. Garvin (2003) 110 Cal.App.4th 484, 488-489 (Garvin) [no sua sponte requirement to additionally instruct on effect of victim's threats against defendant on issue of reasonableness of defendant's conduct, where self-defense instructions given]; 5 Witkin, Cal. Criminal Law, supra, § 677, pp. 1044-1045.) Thus, the trial court need not instruct about specific points or special theories that might be applicable to a particular case, unless such an instruction is requested. (Ibid.)

" " "While a court may well have a duty to give a 'pinpoint' instruction relating [specific] evidence to the elements of the offense and to the jury's duty to acquit if the evidence produces a reasonable doubt, such 'pinpoint' instructions are not required to be

given sua sponte and must be given only upon request." ' ' " (*Anderson, supra*, 51 Cal.4th at p. 997; *People v. Saille* (1991)54 Cal.3d 1103, 1117 (*Saille*).

Where the instructions as given are adequate, "the trial court is under no obligation to amplify or explain in the absence of a request that it do so." (*Mayfield, supra*, 14 Cal.4th at pp. 778-779.) If a jury is instructed on basic principles of law applicable to the charges, but a clarifying instruction is desired, the burden is on the defendant to request one. (*Garvin, supra*, 110 Cal.App.4th at p. 488; 5 Witkin, Cal. Criminal Procedure, *supra*, § 688, pp. 1060-1061.)

C. Theft Principles

The single crime of "theft" in section 484 may encompass the offenses of larceny, larceny by trick, obtaining money by false pretenses or embezzlement. (*People v. Nazary* (2010) 191 Cal.App.4th 727, 740.) Only the latter was charged here, as grand theft pursuant to section 487. Generally, theft occurs when one "fraudulently appropriate[s] property which has been entrusted to him" or when one "knowingly and designedly, by any false or fraudulent representation or pretense, defraud[s] any other person of . . . personal property." (§ 484, subd. (a).)

Shekell contends an erroneous definition of the charged offense was given, applicable to "garden-variety embezzlement," not to his specialized facts and defense. CALCRIM No. 1806 is entitled "Theft by Embezzlement," and the authors cite as authority sections 484 and 503, which establish the charge of theft by embezzlement. (CALCRIM No. 1806.) Section 503 reads: "Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted." It is followed by

numerous specific sections that define different ways in which embezzlement can be committed, and by whom, and defenses to it. (§ 504 et seq.) As given, this pattern instruction was modified by adding selected text of section 504a, placing the case within the factual context of leased goods.

For a conviction of embezzlement under section 504a, the prosecutor was required to show evidence of "intent to injure or defraud the owner of the fraudulently removed, concealed or disposed of goods." (*Eddington, supra*, 201 Cal.App.2d 574, 578-579.) There, the court rejected an argument by the defendant that his conviction of theft by embezzlement (of a record player he bought on an installment plan) was not supported by sufficient evidence, based on his defense theory that "his acts were merely a frustration of repossession by the conditional seller rather than a concealment with intent to defraud." (*Id.* at p. 577.) Thus, "It is well established that intent to defraud may be inferred from the circumstances surrounding the transaction in question." (*Id.* at p. 579.)

In interpreting the language of section 504a for purposes of determining if the pleading of embezzlement was adequate, the court in *People v. Swenson* (1954) 127 Cal.App.2d 658, 662-663 (*Swenson*) explained that an allegation that the defendant "did a certain act fraudulently would inform the accused or any person of reasonable intelligence that the act was done with intent to defraud. While it is elementary that for one to be guilty of embezzlement he must have intended to deprive the owner of his property unlawfully [citations], we are of the opinion, nevertheless, that the word 'fraudulently' necessarily included the element of intent." (*Id.* at pp. 662-663

[embezzlement properly charged and proven regarding an automobile kept in the defendant's possession, without his making the payments required by the sales contract].)

II

SUMMARY OF RECORD AND ARGUMENTS

According to Shekell, since the instructions as given failed to focus adequately upon the specific intent requirement of section 504a, they could have allowed the jury to convict him only for falling behind on his payments while retaining the property, despite his good faith defense. He places great emphasis upon the facts that he never changed the purpose of use of the containers, according to the original entrustment to him, and argues he never intended to fail to comply with his lease obligations. (Cf. *People v. Casas* (2010) 184 Cal.App.4th 1242 [an intent to temporarily deprive the owner of possession can amount to embezzlement of property, if it is taken for a different purpose than the entrustment (e.g., employee driving his dealership's car in lengthy private search for drugs)].)

In addition, Shekell's arguments on appeal seem to encompass a theory that the jury was not adequately instructed on how to evaluate his presented defense of a lack of any required fraudulent intent, in light of his voluntary intoxication evidence about how his ongoing pain medication level interfered with his ability to properly handle his business affairs. We examine the record for support for these assertions.

A. Discussions During Trial

Initially, both parties submitted briefing on embezzlement instructions. The prosecutor proposed a set of instructions that included CALCRIM No. 1806 and also a special one, giving the language of section 504a and a statement about proving the defendant had intended to defraud the owner in concealing the property. However, this proposal was not pursued after the court deferred decision. During in limine motions, the court and counsel discussed prospective instructions on embezzlement, including CALCRIM No. 1806. At that time, defense counsel was focusing on whether the defendant only had an intent to temporarily withhold the property from the owner, and how long that specific intent had to last.

During trial, defense counsel relied on *People v. Casas, supra*, 184 Cal.App.4th 1242, to argue that the court should recognize that only a limited deprivation of use of the owner's property had occurred in the case at trial, because Shekell had only used the containers for their intended purposes—for storage and his own use. Defense counsel argued that the prosecutor was required to prove that Shekell had converted the property for use for a purpose other than the owner originally intended, and for how long. (See *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 361 ["mere conversion is not sufficient to establish embezzlement; rather the conversion must have been with the intent to defraud"].)

Next, defense counsel sought to clarify that the jury instructions could explain that an intent to return the containers was not a defense, but instead, "the fact of an intent to

return them or efforts to return them" would still be relevant to show "whether or not the defendant ever had an intent to deprive the owner or ever had the felonious intent." The court confirmed that the instructions would allow defense counsel to argue a lack of fraudulent intent, from Shekell's efforts to return the containers.

Prior to instructing the jury, counsel and the court discussed instructions on related topics, such as any consciousness of guilt shown by moving the containers, or the effect of any false and misleading statements in the bankruptcy proceedings. The court declined to give CALCRIM No. 362 on the latter topic. Next, the court declined to further modify CALCRIM No. 1806 insofar as Shekell was asking for greater emphasis on his efforts to return the property, because the court did not want to emphasize one piece of evidence over another. However, at defense counsel's request, the court agreed to switch the position of two paragraphs in CALCRIM No. 1806 (one, its usual language defining acting "fraudulently," by taking undue advantage or causing a loss by breaching a duty, and two, the statutory embezzlement language of section 504a). The court expressly found "that those two different paragraphs serve two different purposes. One is definitional and the other one explains the—what statutorily constitutes embezzlement akin to elements."

In further discussions, the court agreed to modify CALCRIM No. 1862 with language from *People v. Sisuphan* (2010) 181 Cal.App.4th 800, 813, to state that evidence of the return of property may be relevant to the extent it shows that the defendant's intent at the time of the taking was not fraudulent. (In *Sisuphan*, the defendant temporarily took money from the employer's safe to get another employee into

trouble, while intending to return the money later; held, embezzlement conviction upheld, because the purpose of the taking was clearly beyond the scope of the trust afforded to him by the employer and was fraudulent.)

After the instructional issues were tentatively resolved, defense counsel submitted an evidentiary memo about his proposals to show Shekell had some good faith belief that he had the right to use or convert the containers for his own use, even after he stopped paying rent, based on his mental state and efforts to seek help.

During closing argument, defense counsel argued Shekell did not have a fraudulent intent to take or conceal the leased property, based on everything that had taken place, including the medical problems that led to his impaired judgment and his beliefs that the solution was just around the corner. Even if such beliefs were unreasonable or mistaken, they were arguably genuine.

B. Set of Instructions Given

In addition to the disputed CALCRIM No. 1806 instruction, the trial court gave CALCRIM No. 1801, explaining the degrees of theft. In CALCRIM No. 1806, the jury was told: "The defendant is charged with grand theft by embezzlement. To prove that the defendant is guilty of this crime, the People must prove that: [¶] "One, an owner or the owner's agent entrusted this property to the defendant; [¶] Two, the owner or owner's agent did so because he trusted the defendant; [¶] Three, the defendant fraudulently converted or used that property for his own benefit; [¶] and four, when the defendant converted or used the property, he intended to deprive the owner of the use.

"A person who fraudulently removes, conceals or disposes of goods leased to him by an instrument in writing is guilty of embezzlement. [This adapted text of section 504a was added to the pattern instruction; italics added.]

"A person acts fraudulently when he or she takes undue advantage of another person or causes a loss to that person by breaching a duty, trust or confidence.

"A good faith believe [*sic*] in acting with authorization to use the property is a defense. In deciding whether the defendant believed that he had a right to the property and whether he held that belief in good faith, consider all the facts known to him at the time he obtained the property along with all the other evidence in the case.

"The defendant may hold a belief in good faith even if the belief is mistaken or unreasonable. But if the defendant was aware of facts that made that belief completely unreasonable, you may conclude that the belief was not held in good faith.

"An intent to deprive the owner of property even temporarily is enough. Intent to restore the property to its owner is not a defense. An agent is someone to whom the owner has [been] given complete or partial authority and control over the owner's property."

The trial court also gave CALCRIM No. 1860, specifying that an owner may testify about the value of property. In CALCRIM No. 1862, the court covered the issue about the effect of evidence about the defendant's intent to restore the property to its owner, in language that was similar to CALCRIM No. 1806. The jury was told such intent was not a defense, but "[r]eturn of the property may be relevant to the extent it shows that a defendant's intent at the time of the conversion or use was not fraudulent."

III

APPLICATION OF STANDARDS

A. Analysis: Not Invited Error Here

At this juncture, we decline to resolve this matter under the theory of invited error, as requested by the Attorney General. The trial court and counsel extensively negotiated jury instruction language, including not only CALCRIM No. 1806 but also CALCRIM No. 1862 [effect of efforts to return property]. During this lengthy sequence of arguments, Shekell changed his position several times and raised substantive objections against including the pattern language from CALCRIM No. 1806 (about a definition of acting fraudulently), while also giving the language of section 504a in the instruction (i.e., "A person who fraudulently removes, conceals or disposes of goods leased to him by an instrument in writing is guilty of embezzlement"). In response to Shekell's concerns, the court modified the order of the paragraphs in the instruction but overruled the other objections. Later, defense counsel's closing argument included claims that the fraudulent intent element had not been proven, based on Shekell's good faith, even if unreasonable, beliefs that he would soon be able to comply with his obligations under the lease.

Only if "it clearly appears on the record that the defendant objected [to instructions] for tactical reasons and not out of ignorance or mistake" may the defendant be precluded from complaining on appeal about the trial court's failure to give an instruction. (5 Witkin, Cal. Criminal Procedure, *supra*, § 680, p. 1050.) This record does

not obviously lend itself to such an interpretation, and the better approach is to consider the substance of the appellate arguments.

B. Waiver of Claim about Pinpoint Instruction

In the discussions at trial about jury instructions, the issue of proof of Shekell's intent in holding and concealing the containers, without paying rent, was extensively addressed, as summarized above. The defense's focus remained primarily on arguments that (1) only temporary deprivations took place, along with efforts to restore the property, to show consistency with his original possessory rights under the lease, and (2) he had a good faith defense of belief in his ability to comply with lease duties.

Although the prosecutor's proposed instructions included a special one, giving the language of section 504a and a statement about the defendant's intent to defraud the owner in concealing the property, the court deferred decision on it and it was not given. Shekell's attorney was clearly aware of the question of whether a requirement of a specific finding on the element of fraudulent intent should be included in the instruction on embezzlement. That issue amounted to a theory about the relationship of particular facts to the charged crime, i.e., his defense he was acting in good faith at all the relevant times, and had not altered the original purpose for which the containers were being leased to him. He sought to rebut the prosecution's arguments about his fraudulent intent as an element of the offense, by relying on the evidence about his serious financial and medical problems, leading to nonpayment under the lease and no timely return of the leased property.

To the extent that Shekell wanted to emphasize different factual circumstances or evidence to rebut the mental element of the embezzlement offense, a proposed instruction along those lines would be "pinpoint" in nature. (See *Saille, supra*, 54 Cal.3d at p. 1119.) He had the obligation to ask the trial court to clarify or amplify the instructions in that manner. (*Anderson, supra*, 51 Cal.4th at pp. 996-997; *Mayfield, supra*, 14 Cal.4th at pp. 778-779.) Now, he "may not complain on appeal that the instruction was ambiguous or incomplete," and arguably, he has waived the current claims. (*Id.* at p. 779)

C. Adequacy of Instructions as a Whole

An alleged instructional omission, about an element of a charged offense, is "a mere trial error, one committed in the presentation of the case to the jury." (*Breverman, supra*, 19 Cal.4th at p. 176.) The test for harmless error applies, to assess any probable adverse effect of an erroneous failure to so instruct, by using "an individualized, concrete examination of the record." (*Breverman*, at pp. 174-176.)

Assuming we should decide the merits of Shekell's argument there was insufficient instructional focus on the evidence regarding his intent, we must consider "if the issue which would have been presented by the omitted instructions . . . was necessarily resolved adversely to the defendant under other, proper instructions." (*Breverman, supra*, 19 Cal.4th at p. 175.) We inquire if there was any significant risk the jury might have been misled about the existence of the required intent for a conviction of embezzlement of leased property. (*Mayfield, supra*, 14 Cal.4th at pp. 777-778.)

In CALCRIM No. 1806, the court explained that the People had to prove that Shekell was leased the property by the owner, based on a situation of trust, but he "fraudulently converted or used that property for his own benefit," and when doing so, "he intended to deprive the owner of the use." The court next used the statutory language of section 504a, to define "embezzlement" as fraudulently removing or concealing or disposing of goods that were under lease.

After this statutory language, the court used the standard terms of CALCRIM No. 1806, to define acting "fraudulently" as taking undue advantage of another person or causing a loss to that person by breaching a duty, trust or confidence. The court then told the jury that an available defense was a good faith belief in acting with authorization to use the property, but the jury could conclude the defendant's belief was not in good faith, if he was aware of facts making that belief completely unreasonable. Even a temporary deprivation of property rights was enough.

The topic of evidence about the defendant's intent to restore the property to its owner was covered in both CALCRIM Nos. 1806 and 1862, by telling the jury such intent was not a defense, but "[r]eturn of the property may be relevant to the extent it shows that a defendant's intent at the time of the conversion or use was not fraudulent." The court gave a voluntary intoxication instruction about how to evaluate whether the defendant acted or failed to act with the intent to deprive the owner of use of the property.

We disagree with Shekell that this set of instructions failed to provide the jury with adequate guidance for evaluating the evidence about his fraudulent intent, as shown

by his conduct of his affairs over a period of more than a year, by failing to make rent payments or to disclose the location of the containers, or to return them. It is significant that he has not challenged the sufficiency of the evidence to support the conviction, and it is specious for him to disregard the evidence about the manner in which he used the property contrary to the terms of the lease, while continuing to argue he properly used it for his enjoyment, simply because of the original purpose of the lease. There was circumstantial evidence of his "intent to injure or defraud the owner of the fraudulently removed, concealed or disposed of goods." (*Eddington, supra*, 201 Cal.App.2d at pp. 578-579.)

The jury learned from the instructions given that it was required to determine whether the alleged acts of concealment and nonpayment, shown in the evidence, were impliedly done with an intent to defraud. (*Swenson, supra*, 127 Cal.App.2d at pp. 660-663.) The issues about noncompliance with his duties under the lease were indirectly addressed in a portion of CALCRIM No. 1806, telling the jury that a person acts fraudulently by taking undue advantage or causing loss "by breaching a duty, trust or confidence."

When the instructions are read as a whole, it is apparent that the jury was fully instructed as to the necessity of finding that Shekell moved and/or concealed the containers while failing to pay rent, with the specific intent of defrauding the owner of an ownership interest. (See *Swenson, supra*, 127 Cal.App.2d at p. 665.) The jury was given the opportunity and standards for evaluating all the relevant factors that affected his

mental condition at the relevant times, with respect to compliance with the lease terms and purpose. There was no instructional error and we affirm.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.