

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KHALED MOHAMED,

Defendant and Appellant.

D059832

(Super. Ct. No. SCD226904)

APPEAL from a judgment of the Superior Court of San Diego County, David M. Gill, Judge. Affirmed.

Michael J. McCabe and Charles R. Khoury, Jr., for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Steven T. Oetting and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

Khaled Mohamed was convicted by a jury of possession of methamphetamine for sale (Health & Saf. Code, § 11378),<sup>1</sup> transportation of methamphetamine for sale between two noncontiguous counties (§ 11379, subd. (b)), using a false compartment to smuggle drugs (§ 11366.8, subd. (a)), and three conspiracy counts.<sup>2</sup> The jury found true the special allegation appended to all counts that the substance containing methamphetamine exceeded 10 kilograms by weight in violation of section 11370.4, subdivision (b)(3).

On appeal Mohamed contends: (1) the trial court abused its discretion when it denied his request to discharge retained counsel on the eve of jury selection; (2) he was deprived of effective assistance of counsel; (3) the court improperly encouraged Mohamed to go to trial; (4) his motion to suppress was erroneously denied; (5) there was insufficient evidence to support the convictions; and (6) these cumulative errors denied him a fair trial.

---

<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise specified.

<sup>2</sup> The conspiracy counts were conspiracy to possess methamphetamine for sale (Pen. Code, § 182, subd. (a)(1); § 11378), conspiracy to transport methamphetamine for sale (Pen. Code, § 182, subd. (a)(1); § 11379), and conspiracy to sell methamphetamine (Pen. Code, § 182, subd. (a)(1); § 11379).

## FACTUAL BACKGROUND

A. The Prosecution Case*The Drug Smuggling Operation*

In the Spring of 2009, the United States Drug Enforcement Agency (DEA) began investigating a narcotics trafficking operation that used Tijuana, Mexico, as a port of entry. The DEA garnered information about the narcotics trafficking operation through the use of wiretaps on numerous cellular telephones used by the various participants in the operation. The intercepted calls showed that (1) a Mr. Jesus Dominguez-Gallardo (Jesus) was the "facilitator," responsible for arranging the shipment of the drugs into the United States; (2) Mr. Alfredo Garcia-Luviano (Alfredo) was responsible for receiving the narcotics from Southern Mexico and repackaging them to fit into the hidden compartments in "load cars," and then delivering the load car to the load driver to transport the drugs from Tijuana across the border and into the possession of someone in the United States; and (3) Mr. Miguel Galeana (Miguel) acted as the middleman who received the load car in the United States and moved the drugs from the load car to the narcotics buyer. The prosecution's charges against Mohamed were based on their theory that Mohamed's role was to be the driver of the load car who would drive the shipment from Tijuana into the United States and rendezvous with Miguel.

In early 2010 investigators identified a silver Volkswagen that was to be used as a load car. DEA Special Agent Shaffer learned from wiretaps that the registration for the Volkswagen was to be transferred into the name of the load driver. This is typical in

narcotics trafficking operations because it is easier to cross the border without raising suspicions if the load car is registered to the load driver. In February 2010, Torrance Police Officer Ponegalek, assisting the DEA in conducting surveillance for this investigation, saw the Volkswagen at an auto body shop investigators believed was used to manufacture the hidden compartments for hiding the narcotics in load cars.

*The March 25 Events*

On March 24, 2010, DEA agent Shaffer learned the registration for the Volkswagen was being transferred to Mohamed. Shaffer contacted Ponegalek, explained the DEA believed the Volkswagen was going to cross the border loaded with narcotics, and enlisted Ponegalek's assistance to conduct surveillance and intercept Mohamed's Volkswagen.

On March 25, 2010, Ponegalek's team (acting on information obtained from wiretaps) set up surveillance outside Miguel's home in Whittier, California. Shortly before noon, Miguel left his house and Torrance Police Detective Dasner was among those following Miguel's vehicle. Dasner saw Miguel start using "counter-surveillance" driving techniques before eventually driving into and parking in a parking lot. About two minutes later, Mohamed pulled into the same parking lot and parked his Volkswagen next to Miguel's car. After the two men had a short conversation, they got back into their respective cars and left in tandem, with Mohamed following Miguel. Two minutes later, they pulled into a Denny's restaurant parking lot and parked side by side. Mohamed got out of the Volkswagen. Miguel got out of his car (a Honda), opened the trunk of the Honda, removed a floor jack and a screwdriver set, and put the tools in the Volkswagen.

Miguel then got into the Volkswagen and drove away, and Mohamed remained in the parking lot.

A few minutes later, Miguel rendezvoused with a Hispanic male driving a burgundy Nissan truck, and Miguel (driving the Volkswagen) and the Hispanic male (driving the Nissan) drove together in tandem to a trailer park, arriving around 1:40 p.m., where they parked at a residence inside the trailer park. About 40 minutes later, police observed the driver of the Nissan carry a large, heavy looking cooler outside, put it in the back of the Nissan, and drive away. Shortly thereafter, Miguel drove away from the trailer park in the Volkswagen. Police followed the Nissan to a house in Compton that authorities believed was a "stash house" where drug traffickers stored their drugs. Based on their experience and observations, the detectives believed they had been observing a drug transaction. Ponegalek's team returned to the Denny's parking lot where Mohamed was waiting, and watched the completion of the vehicle switch. Shortly before 3:00 p.m., Mohamed drove the Volkswagen out of the Denny's parking lot, followed by Miguel in the Honda. The detectives terminated their surveillance and reported what they had seen to federal authorities.

#### *The March 30 Events and Aftermath*

On March 29, 2010, DEA agents intercepted two telephone conversations between Alfredo and Miguel during which they discussed another drug transaction happening the

following day, the driver of the load car would be the same driver, and that "Pelon"<sup>3</sup> would call Miguel. On March 30, DEA Agent Shaffer again requested Ponegalek and his team to conduct surveillance on the same people, the same vehicles, and the same scenario. At 1:19 p.m., authorities intercepted a telephone call between Miguel and a Mr. Garcia that reported Mohamed was waiting in line at the border crossing into the United States. Garcia told Miguel that Garcia would notify Miguel once Mohamed had crossed the border so Miguel could "get situated." Mohamed crossed the border in the Volkswagen at 1:39 p.m. and, at the same time, Jesus (in an intercepted telephone call with an unknown person called "Marcos") confirmed to Marcos that Mohamed had successfully crossed the border. At 2:24 p.m., Mohamed again crossed the border from Mexico into the United States, this time on foot, which suggested to detectives that he crossed the border earlier in his Volkswagen, parked the car, went back into Mexico on foot, and then immediately returned on foot from Mexico back into the United States.

An hour after Mohamed crossed on foot, Alfredo told Miguel (in another intercepted telephone call) Mohamed had left an hour ago, was on his way to meet Miguel, and would call Miguel. Alfredo stated there were 23 packages of drugs; Miguel stated he would telephone Mohamed to find out where he was. A few minutes later, Alfredo telephoned Jesus and said Mohamed had left with his car from where he had parked it in the United States, and Alfredo had already informed Miguel that Mohamed was on his way.

---

<sup>3</sup> "Pelon" is a nickname given to people with bald or shaved heads. At the time of the drug transactions, Mohamed had a shaved head.

Officers had been watching Miguel throughout that day. At 5:38 p.m., Detective Dasner saw Miguel drive his car into the Denny's parking lot again, and park next to Mohamed's Volkswagen. Miguel got out and entered the Denny's restaurant. At 5:30 p.m., authorities intercepted a telephone call from Miguel to Alfredo in which Miguel confirmed he had rendezvoused with Mohamed and they were waiting to hear from "the lady" or "La Negra" before making their next move. At 5:43 p.m., Mohamed (accompanied by his young daughter) and Miguel left the restaurant and went to the parking lot. Miguel opened the trunk of his car, removed a tire iron and a bag of tools, and put them in the trunk of the Volkswagen. The three of them then went back inside the restaurant. At 5:57 p.m., Miguel left the restaurant, entered Mohamed's Volkswagen, and drove away. This exchange was characterized as a "classic" technique used by narcotics traffickers that allows them to take possession of the drugs without too many people knowing the ultimate destination for the contraband. Minutes later, Officer Okazaki conducted a traffic stop as Miguel drove Mohamed's Volkswagen and, ultimately, the Volkswagen was impounded. At the tow yard, a drug sniffing dog alerted on the car, and officers obtained a warrant to search it. The subsequent search revealed 23 packages of methamphetamine, with a total weight of nearly 25 pounds, hidden in an after-market compartment in the Volkswagen.

Around 11:00 p.m. that night, authorities intercepted a telephone call between Alfredo and a Mr. Sorosa-Garcia in which they discussed having Mohamed go to the Torrance Police Department as early as possible to retrieve the car from impound. Alfredo informed Sorosa-Garcia there was a car ready to take Mohamed to the police

department and they were just waiting for him. Alfredo also asked if Sorosa-Garcia was going with Mohamed to retrieve the car and cautioned him not to talk to Mohamed about the specifics of the drugs or the location of the hidden compartments so that, if Mohamed was questioned by police, he would be unable to provide any specific information.<sup>4</sup> In a telephone call on the morning of March 31, 2010, between Jesus and Marcos, Jesus assured Marcos that Miguel had not said anything to police. Jesus also stated he had gone to Mohamed's Tijuana home around 2:00 a.m. to find out what was going on, and that he intended to encourage Mohamed, as the registered owner, to retrieve the Volkswagen. Jesus knew which police agency had impounded the car, and therefore knew which agency needed to be contacted to get it released, and Jesus expressed confidence the hidden compartments were well made and it would be hard for law enforcement to find them. However, Jesus stated that if he learned police had found the drugs he would tell Mohamed and there would be no reason to retrieve the car.

On April 1, 2010, Mohamed had a telephone conversation with Ponegalek about retrieving the car. When Ponegalek spoke with Mohamed, he did not tell Mohamed he was a narcotics detective. However, during one of their three telephone conversations between April 1 and April 8, 2010, Ponegalek did tell Mohamed the car was believed to be evidence of a crime and that police were trying to find a telephone number for the

---

<sup>4</sup> An expert testified that drivers "always know [there are] narcotics in the car. . . . [¶] They may not always know how much, but they do know there is a significant quantity." He also testified drivers rarely know where the hidden compartments are or how to access them because, if they are stopped and pressured, they might give up that information.

driver (Miguel), and Ponegalek asked Mohamed to get a telephone number of the driver for them.

### B. The Defense

Mohamed testified on his own behalf. He admitted he had illegally obtained a California driver's license, had participated in a scheme to obtain stolen property, and was an occasional user of methamphetamine, but denied any knowledge the drugs were ever in his car and denied he had been paid to transport the drugs. Mohamed testified to his activities in connection with the March 25 and March 30 events.

#### *The March 25 Events*

Mohamed lived in Tijuana with his girlfriend (Lisa) and their daughter. Mr. Danny Garcia (Danny), who is related by marriage to Lisa, found a Volkswagen for sale and brought the car to the attention of Mohamed and Lisa because Lisa needed a car. The plan was to register the car in California under Mohamed's name as a favor to Lisa, and Mohamed started the process around March 21 but did not have a bill of sale and could not complete the registration, so he drove the car back to Tijuana.

On March 25, Mohamed drove back into the United States en route to meeting with Miguel, whom Mohamed was told could give him the bill of sale in Bellflower, California. Mohamed was also told that Miguel, who was related to Danny, could fix the car's overheating problem for free, and Mohamed was given directions to a meeting place in Bellflower. Sometime after midnight on March 25, Mohamed crossed the border on his way to meet Miguel. There were sniffer dogs patrolling the entry point, and Mohamed was sent to the secondary inspection, but this was not unusual as Mohamed

was often sent to secondary inspection, which he assumed was because of his name. This time, he was sent to secondary inspection because the car had not yet been properly registered in his name. However, he cleared the inspection and went to a friend's house in San Diego to sleep.

After waking that morning, Mohamed drove to Bellflower to rendezvous with Miguel. Mohamed had never met Miguel, but had received his number from Danny and called him. Miguel guided Mohamed to a rendezvous point, and then Mohamed followed Miguel to a Denny's in Bellflower. Mohamed told Miguel that he needed the paperwork for the car and to have the overheating problem fixed. Miguel drove the Volkswagen to a trailer park, with Mohamed riding in the back seat, and Mohamed went inside a unit at the trailer park and was given the paperwork for the car. Miguel then drove himself and Mohamed back to the Denny's, and Mohamed left Miguel at the Denny's and drove the Volkswagen back to Tijuana.

### *The March 30 Events*

Mohamed kept the car until the morning of March 29, when he drove to Rosarito and left the car with Lisa (from whom he was now separated) and Danny. Mohamed then returned to Tijuana. Lisa and Danny brought the car back to Mohamed the next day, March 30, and told him to take the car into the United States to get it fixed. He arranged to drive the Volkswagen from Mexico into the United States, using the Otay Mesa border crossing, where he would meet with two acquaintances at the McDonald's on Plaza Boulevard. Mohamed was told these men were going to take the Volkswagen to have it repaired. He crossed into the United States at 1:39 p.m. and met with the two men at a

McDonalds. The men then drove him back to the border, and Mohamed walked back across the border and returned to his home in Tijuana.

When he arrived home around 2:00 p.m., Lisa and Danny were at his house. They told Mohamed that he needed to telephone Miguel to find out where to pick up the car, the repairs should only take an hour, and Mohamed needed to get up there before the repair shop closed at 5:00 p.m. Mohamed walked with his two-year-old daughter back across the Otay Mesa border crossing into the United States, where they boarded a bus and rode to San Ysidro. In San Ysidro, they boarded another bus that took them to Bellflower, where he thought his car was being repaired. On the way Mohamed called Miguel.

On arriving at the rendezvous in Bellflower, the Volkswagen was parked there, but Miguel was not there with the keys, so Mohamed went inside the Denny's to wait for Miguel. When Miguel arrived 30 minutes later, shortly before 6:00 p.m., he appeared to be drunk. Miguel said the car was not yet repaired, but he could get it fixed in 90 minutes, and Mohamed should just wait there until the repairs were done. Miguel and Mohamed then went outside together, where Miguel got some tools out of his car, put them in the Volkswagen, and drove off in it. Mohamed waited but, when Miguel did not return, he left with his daughter and returned to Tijuana by bus.

Mohamed went to the tow yard the following day to try to get the car back, but the tow yard referred him to the Torrance Police Department to obtain a release. Mohamed went to the Torrance Police Department, but no one could help him, and they instead gave Mohamed a telephone number to call the detective in charge of the case. Mohamed

called numerous times, and spoke with Ponegalek (among others) over the next few days, but could not get the car released.

Mohamed went to Missouri in mid-April and returned on May 3, 2010. He received a telephone call from someone who told him his car had been released and he could pick it up. However, when he crossed the border the next day, he was arrested. Mohamed did not know why he was arrested. He offered to help law enforcement and tried to do so after his arrest, but nothing happened.

## II

### ANALYSIS

#### A. The Denial of Mohamed's Motion to Relieve Counsel Was Not an Abuse of Discretion

Mohamed contends the court erred when it denied his motion to relieve his retained counsel. Mohamed appears specifically to argue the court applied the wrong test when ruling on his motion, asserting the court applied the standards applicable to motions to relieve appointed counsel set forth in *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) rather than the standards for motions to relieve retained counsel set forth in *People v. Ortiz* (1990) 51 Cal.3d 975 (*Ortiz*), and such a misapplication of standards compels reversal under the rationale of *People v. Lara* (2001) 86 Cal.App.4th 139 (*Lara*).

#### *Background*

In the late afternoon of March 14, 2011, with jury selection scheduled to begin the following morning, Mohamed moved to discharge his retained counsel and "probably" to obtain a public defender. The motion occurred after the court had already conducted a

lengthy hearing on (and ruled adversely to) Mohamed's Penal Code section 1538.5 motion, and had already heard and made rulings on various other in limine motions. The court initially rejected the motion, stating it was "too late for that . . . . You're not going to switch horses now in the middle of the stream." However, after Mohamed persisted by claiming his attorney had a conflict of interest, the court (although indicating Mohamed should not "expect that I'm going to [grant the request] at this point in the trial") agreed to "let [him] make a record," and held a chambers hearing on the motion at which only Mohamed and his attorney (Ms. Lacher) were present.

During the chambers hearing, the court permitted Mohamed to explain the basis of his claim that Ms. Lacher had a conflict of interest. Mohamed asserted that Lacher had represented Lisa when Lisa engaged in a "free talk" with the prosecution and, because Lisa admitted the Volkswagen had been in her possession the night before Mohamed made the March 30 crossing, Lacher had a conflict of interest in representing Mohamed because Lacher was not seeking to introduce that free talk. Mohamed also claimed Lacher had not adequately prepared for trial. The court noted that, even if Lacher tried to call Lisa to obtain that testimony, Lisa would probably not testify, and Lacher had the responsibility for deciding how to try the case.

The court reiterated that Mohamed's motion "is just not timely. . . . [Y]ou may be unhappy with the way things are going . . . [b]ut you can't now decide that you don't like the way things are going so you want a different lawyer. . . . That's . . . not a basis for relieving her." The court then asked Lacher about the conflict, and Lacher explained she had represented Lisa in proceedings to extradite Lisa to Missouri but "that had nothing to

do with any factual scenario as we have here." Lacher acknowledged Lisa had engaged in a "free talk" that "maybe . . . would lessen the time she was facing" in Missouri, but Lacher had not been present during (and Lisa had gave up her right to counsel in) that free talk, and Lacher removed herself from representing Lisa at the free talk to avoid "having any conflict of interest in case the People wanted to ask her about [Mohamed]."

Lacher also noted Lisa "is very untruthful" but that, if Lisa had made exonerating statements during the free talk, the prosecution would be obligated to turn that over to the defense. Lacher also stated, as far as trying to call Lisa as a witness, "I'm not sure that anything that comes out of her mouth is truthful," and, moreover, counsel for Lisa would likely advise her to invoke the right against self-incrimination, and testifying might also undo the gains Lisa had tried to obtain by participating in the free talk. After hearing this background, the court confirmed its tentative ruling and denied Mohamed's motion to relieve Lacher as counsel.

### *Legal Framework*

A criminal defendant's right to the effective assistance of counsel includes the right to retain counsel of his or her choice. (*People v. Gzikowski* (1982) 32 Cal.3d 580, 586.) Indeed, the right to counsel of one's choice is so fundamental that a criminal defendant need not demonstrate actual prejudice resulting from the erroneous deprivation of that right; reversal is automatic. (*Ortiz, supra*, 51 Cal.3d at pp. 988.) However, the right is not absolute, and a trial court retains discretion to deny a motion to substitute appointed counsel where the substitution "(1) would cause ' "significant prejudice" ' to the defendant, e.g., by forcing him to trial without adequate representation, or (2) is untimely

and would 'result in . . . "disruption of the orderly processes of justice unreasonable under the circumstances of the particular case." ' " (*Lara, supra*, 86 Cal.App.4th at p. 155, quoting from *Ortiz*, at p. 982.)

"While we have recognized competing values of substantial importance to trial courts, including the speedy determination of criminal charges, the state should keep to a 'necessary minimum its interference with the individual's desire to defend himself in whatever manner he deems best, using any legitimate means within his resources' [citation]. A criminal defendant's right to decide how to defend himself should be respected unless it will result in 'significant prejudice' to the defendant or in a 'disruption of the orderly processes of justice unreasonable under the circumstances of the particular case.' [Citation.] In other words, we demand of trial courts a 'resourceful diligence directed toward the protection of [the right to counsel] to the fullest extent consistent with effective judicial administration.'" (*Ortiz, supra*, 51 Cal.3d at pp. 982-983.)

The considerations to be weighed when considering a motion to discharge a *retained* counsel differ from the considerations to be weighed when considering a motion by an indigent criminal defendant seeking to substitute one *appointed* attorney for another. In the latter case, the defendant must show either that the first appointed attorney is providing inadequate representation, or that he or she and the attorney are embroiled in irreconcilable conflict. (*Marsden, supra*, 2 Cal.3d at pp. 124-125.)

In *Lara*, the court discussed at length what does and does not constitute a " "disruption of the orderly processes of justice unreasonable under the circumstances of the particular case." ' " (*Lara, supra*, 86 Cal.App.4th at p. 155.) For example, there is no

disruption where the defendant brings his or her difficulties with counsel to the court's attention at the first superior court hearing following arraignment, makes a request to substitute counsel two weeks before trial, the prosecution witnesses are law enforcement officers and there is no evidence a continuance would prevent their appearance, and nothing points to the defendant's desire to delay trial. (*Id.* at pp. 159-160, discussing *People v. Stevens* (1984) 156 Cal.App.3d 1119.) The same is true where a request to substitute counsel is made after declaration of a mistrial and well before commencement of the second trial. (*Lara*, at p. 161, discussing *Ortiz, supra*, 51 Cal.3d 975.)

In contrast, when a defendant requests substitution of counsel at " 'literally the moment jury selection [is] to begin,' " and the court is satisfied defense counsel is ready and able to defend vigorously and competently, the disruption necessitated by substituting counsel can be unreasonable under the circumstances at hand. (*Lara, supra*, 86 Cal.App.4th at p. 160, discussing *People v. Lau* (1986) 177 Cal.App.3d 473.) Similarly, where the request is made on the first day of trial, thus necessitating disruption, and the defendant's explanation of his or her dissatisfaction with present counsel suggests the true motivation is to delay the trial, the disruption may again be deemed unreasonable under the circumstances at hand. (*Lara*, at p. 161, discussing *People v. Turner* (1992) 7 Cal.App.4th 913.)

In limited circumstances, however, a request to substitute counsel made on the eve of trial nonetheless may be deemed timely. In *Bland v. California Dept. of Corrections* (9th Cir. 1994) 20 F.3d 1469, disapproved on other grounds in *Schell v. Witak* (9th Cir. 2000) 218 F.3d 1017, 1025, defense counsel had been held in contempt for failing to

appear, then subsequently failed to appear at a continued hearing, prompting defendant's request for substitution. (*Id.* at pp. 1474-1475.) At that time, the trial already had been continued once. More importantly, immediately after denying defendant's request, the court granted another continuance and effectively postponed the trial for another six weeks to two months, and present defense counsel had not yet prepared for trial. (*Id.* at p. 1476.) Under these circumstances, the court concluded the request for substitution was timely. (*Ibid.*) Similarly, in *Lara*, the defendant requested substitution on the scheduled first day of trial but there was no evidence that he did so for purposes of delay. To the contrary, the record "strongly suggest[ed]" that present defense counsel "had not consulted with [defendant] during the numerous continuances, and [defendant] was unaware of the nature of [counsel's] preparation until the moment the trial was finally set to begin. [Defendant] was faced with the start of a trial in which he faced a possible third strike sentence, and he was clearly upset that counsel did not seem prepared. Under the circumstances, [defendant] informed the court of his concerns at the first possible opportunity." (*Lara, supra*, 86 Cal.App.4th at pp. 162-163.)

The denial of a motion to discharge retained counsel may not be reversed absent a showing the order was an abuse of discretion. (*Ortiz, supra*, 51 Cal.3d at pp. 983-984.)

#### *Analysis*

We conclude the circumstances of this case more closely resemble those of *Lau* and *Turner* than those of *Bland* and *Lara*, and therefore denial of the motion to discharge Lacher was not an abuse of discretion. In some respects, trial had already begun: the court had already heard evidence on Mohamed's Penal Code section 1538.5 motion, and

issued numerous rulings on a variety of pretrial motions. Moreover, the parties were ready to begin selection of a jury the following day, and the trial judge was in the best position to know the extent to which the orderly processes of justice would have been disrupted if trial was delayed indefinitely to find a new appointed (and conflict-free) attorney and give the new attorney time to fully prepare.

Mohamed's primary argument for reversal appears to be premised on the suggestion that the court erroneously applied *Marsden* standards rather than *Ortiz* standards when ruling on the motion, and therefore that reversal is appropriate under the rationale of *Lara*.<sup>5</sup> However, Mohamed's sole support for this assertion is that, *after* the court had indicated the motion was made "too late [and] . . . [y]ou're not going to switch horses now in the middle of the stream," the court agreed to "let you make a record" and held an in camera hearing at which the court asked Mohamed *why* it should grant his motion, and then allowed Mohamed to expand upon his claims of conflict of interest and ineffective counsel. Unlike *Lara*, in which the trial court's comments when it denied the motion to discharge appointed counsel specifically referred to *Marsden* (*Lara, supra*, 86 Cal.App.4th at pp. 146-148), the trial court here made no mention of *Marsden* during the

---

<sup>5</sup> Mohamed also appears to argue, assuming the court did appropriately consider his motion under the *Ortiz* framework, it was an abuse of discretion to deny the motion because Lacher was representing another defendant (O'Brien) whose case was trailing in the same judge's department, and therefore there would have been no disruption of the orderly processes of justice. However, this argument presumes the O'Brien *prosecutor* would have been prepared to select jurors and/or commence calling witnesses the following day, and also presumes *Lacher* was also have been ready to start the O'Brien case the following day, and Mohamed's brief contains no record references supporting either proposition.

course of the hearing and, absent an affirmative showing to the contrary, we presume this experienced trial judge knew and applied the correct legal standards. (*People v. Torres* (1950) 98 Cal.App.2d 189, 192; *People v. Gutierrez* (2009) 174 Cal.App.4th 515, 527.) The mere fact the court was willing to consider whether there might be countervailing reasons for granting a motion it had already deemed untimely, a primary consideration under *Ortiz*, does not undermine our confidence that the court ruled on Mohamed's motion by applying the *Ortiz* standards. We conclude the trial court's denial of the motion to relieve Lacher based on untimeliness, which would have indefinitely delayed Mohamed's trial and thereby disrupted the orderly processes of justice, was not an abuse of discretion.

#### B. Mohamed Was Not Denied Effective Assistance of Counsel

Mohamed contends he was denied effective assistance of counsel because (1) Ms. Lacher represented other clients whose interests conflicted with his, and (2) Ms. Lacher's case load created a conflict of interest by impinging on her ability to prepare and present an adequate defense.

#### *Legal Standards*

The right to the assistance of counsel, guaranteed by the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution, includes the correlative right to representation free from any conflict of interest that undermines counsel's loyalty to his or her client. (*People v. Rundle* (2008) 43 Cal.4th 76, 168 ["It has long been held that under both Constitutions, a defendant is deprived of his or her constitutional right to the assistance of counsel in certain circumstances when,

despite the physical presence of a defense attorney at trial, that attorney labored under a conflict of interest that compromised his or her loyalty to the defendant." ] (*Rundle*), disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22 (*Doolin*). " 'As a general proposition, such conflicts "embrace all situations in which an attorney's loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another client or a third person or his own interests. [Citation.]" ' ' ' (*Doolin*, at p. 417.)

In *Mickens v. Taylor* (2002) 535 U.S. 162, the United States Supreme Court confirmed that claims of Sixth Amendment violation based on conflicts of interest are simply a category of ineffective assistance of counsel claims to be evaluated under the standards articulated in *Strickland v. Washington* (1984) 466 U.S. 668, and generally require a defendant to show (1) counsel's deficient performance, and (2) a reasonable probability that, absent counsel's deficiencies, the result of the proceeding would have been different. (*Rundle, supra*, 43 Cal.4th at p. 169.) "In the context of a claim of conflict of interest, however, the deficient-performance prong is satisfied by a showing that defense counsel labored under an actual conflict of interest . . . 'a conflict *that affected counsel's performance*—as opposed to a mere theoretical division of loyalties.' " (*Ibid.*, quoting *Mickens*, at p. 171.)

Thus, as explained in *Doolin, supra*, 45 Cal.4th at page 418, " '[I]nquiry into actual conflict [does not require] something separate and apart from adverse effect.' [Citation.] 'An "actual conflict," for Sixth Amendment purposes, is a conflict of interest that adversely affects counsel's performance.' "

### *Analysis*

Mohamed first asserts Lacher had an actual conflict of interest because of her representation of Lisa.<sup>6</sup> Mohamed argues this conflict actually had an adverse affect on Lacher's presentation of a defense for Mohamed because (1) Lacher did not attend the free talk (to avoid a conflict) and therefore was unaware of what exonerating information Lisa may have revealed during that free talk, and (2) Lacher chose not to call Lisa as a witness to testify about allegedly exonerating information. However, the only reference in the trial record to allegedly exonerating information was that Lisa could testify she had the car the night before Mohamed's second crossing and the drugs were placed into the car at that time, and Lisa had so informed authorities of these facts during the free talk. However, as Lacher explained at trial, *had* Lisa given information during the free talk that exonerated Mohamed, the prosecution would be obligated under *Brady v. Maryland* (1963) 373 U.S. 83 to turn that material over to Lacher. Because no *Brady* information from this free talk was turned over to Lacher, Mohamed cannot show he was harmed by

---

<sup>6</sup> Mohamed also claims Lacher had a conflict of interest because she represented a Mr. Prado, who Mohamed claims was a "higher up" in the same drug organization for which Mohamed allegedly worked. Although it appears Lacher did represent Prado, and that he was a codefendant with another person caught as part of the same investigation into the narcotics trafficking operation, Lacher explained there was no conflict because Prado "maintains he doesn't even know any of the players or any of the parties" and that she had obtained all of her information from Mohamed (not Prado) "[s]o there is no conflict." Because this record is inadequate to demonstrate there was an actual (in contrast to theoretical) conflict between Mohamed and Prado, and Mohamed has not identified anything Lacher did or failed to do as a result of this alleged conflict that deprived him of effective assistance of counsel (*Rundle, supra*, 43 Cal.4th at p. 169), we do not further consider this aspect of Mohamed's appellate claim of ineffective assistance of counsel.

Lacher's absence from that free talk, and therefore the second aspect of an ineffective assistance of counsel claim cannot be demonstrated. (*People v. Cox* (1991) 53 Cal.3d 618, 656, disapproved on other grounds in *Doolin, supra*, 45 Cal.4th at p. 421, fn. 22 [court need not determine whether counsel's performance was deficient if convinced no prejudice was suffered by the defendant as a result of alleged deficiencies].) Moreover, as noted by the trial court and agreed to by Lacher, even were Lacher to call Lisa as a witness, it was unlikely Lisa would agree to waive her Fifth Amendment rights against self-incrimination because it would expose her to criminal liability. Finally, even had Lisa waived the right against self-incrimination, her admission that she had the car the night before to accomplish the loading would merely have added to *her* criminal culpability without detracting from *Mohamed's* guilty knowledge, because Lisa's guilty knowledge is in no way mutually exclusive of (or even inconsistent with) Mohamed's guilty knowledge.

Indeed, when courts are faced with an ineffective assistance of counsel claim based on an alleged conflict of interest, one relevant consideration is to " 'examine the record to determine (i) whether arguments or actions omitted would likely have been made by counsel who did not have a conflict of interest, and (ii) whether there may have been a tactical reason (other than the asserted conflict of interest) that might have caused any such omission.' " (*Doolin, supra*, 45 Cal.4th at p. 418.) We conclude it is likely a nonconflicted counsel would have made the same decision not to call Lisa as a witness, and in fact Lacher specifically articulated a rational tactical reason for not calling her, because Lacher explained Lisa was very untruthful and Lacher would not "trust anything

that Lisa says." Moreover, Lisa would have been subjected to numerous grounds for impeachment, including the understandable desire to help Mohamed (the father of her child) and her criminal record. A rational trial counsel, representing a defendant such as Mohamed who held a Master's Degree and no criminal record, could rationally decide Lisa's de minimus value to the defense was outweighed by the taint to Mohamed of having the jury learn he was romantically linked to a woman who had served prison time for drug-related offenses. (Cf. *People v. Vines* (2011) 51 Cal.4th 830, 878 [decision not to call witness because of concern over harmful material a valid tactical choice]; *People v. Floyd* (1970) 1 Cal.3d 694, 709-710 [decision on which witnesses to call is tactical choice, and not calling witness with prior criminal record to support alibi defense well within range of competence], disapproved on other grounds in *People v. Wheeler* (1978) 22 Cal.3d 258, 287, fn. 36.)

Mohamed also asserts his counsel's busy practice created a conflict of interest by impinging on her ability to prepare and present an adequate defense in a timely fashion. However, a defendant must show both defense counsel's deficient performance and that there was a reasonable probability, absent counsel's deficiencies, the result of the proceeding would have been different. (*Rundle, supra*, 43 Cal.4th at p. 169.) Because Mohamed's "busy practice" claim appears to be a generalized complaint, and is unaccompanied either by any separate specification of what Lacher did or did not do that fell outside " 'the wide range of reasonable professional assistance' " (*People v. Frye* (1998) 18 Cal.4th 894, 979, disapproved on other grounds in *Doolin, supra*, 45 Cal.4th at p. 421, fn. 22), or of the prejudice resulting from such deficient performance, we do not

believe Mohamed has demonstrated he was deprived of effective assistance of counsel because of Lacher's busy practice.

C. The Court Did Not Improperly Induce Mohamed to Go to Trial

Mohamed argues the trial court acted improperly by (1) encouraging Mohamed to go to trial and (2) not sua sponte recusing himself.

*Factual Basis for Appellate Claims*

When Mohamed attempted to discharge Lacher on the eve of trial, he claimed Lisa would confirm the drugs were placed in the car while she had it in Tijuana and, although he drove the car across the border, he was unaware of the drugs. When it became apparent the court was not going to permit Mohamed to change attorneys, Mohamed stated "I think I've got a better chance just pleading to the sheet," and the court acknowledged Mohamed could elect to plead guilty, but reassured him the court would not penalize him at sentencing if he decided to go to trial. The court noted the prosecution had not agreed to a plea bargain, so Mohamed would have to plead guilty to all counts, but reiterated that the decision to go to trial would not adversely impact Mohamed when the judge made his sentencing choices. The court noted it might be possible Mohamed would obtain a better result if he went to trial if, for example, he elected to testify and the jury believed his story, but again reassured Mohamed that if he chose to go to trial the court "won't hold it against you . . . [¶] That won't affect my sentence at all."

### *Analysis*

Mohamed's claim that the trial judge somehow put undue pressure on him to go to trial rather than to plead guilty is meritless. The court acknowledged Mohamed could elect to plead guilty but, in the absence of a plea agreement with the prosecution, he would be required to plead guilty to all of the charges and enhancements. The court noted certain sentencing parameters would apply, regardless of whether Mohamed pleaded guilty to all charges or went to trial and was convicted of all charges, and reiterated several times that the court would not penalize him at sentencing if he decided to go to trial. We are convinced there was no suggestion, much less undue pressure, that Mohamed should elect to go to trial. Moreover, because there was no plea bargain offered to Mohamed, it does not appear he suffered any prejudice from going to trial, and his brief on appeal is silent on what alleged prejudice he suffered from electing to go to trial.

Mohamed also suggests the trial judge was required *sua sponte* to disqualify himself as judge because Mohamed admitted, during the *in camera* hearing, he drove the car across the border, albeit without knowledge of the cargo it carried. Mohamed cites no authority for the proposition that a judge who learns facts during an *Ortiz* hearing must disqualify him- or herself, and the law appears to the contrary. "Although a defendant in a criminal proceeding, indeed a party in any proceeding, 'is entitled to a trial by a judge who is detached, fair and impartial' [citation], the mere fact a judge obtains information during litigation does not automatically disqualify that judge from further proceedings. 'A trial judge hears many items during the course of a trial which are inadmissible, and

. . . is called upon to rule on the admissibility of numerous evidentiary matters. The fact that [the judge] has heard these things does not mean that [the judge] cannot divorce them from [his or her] mind.' " (*People v. Scott* (1997) 15 Cal.4th 1188, 1206.) Moreover, "[w]e need not decide definitively whether the judge should have disqualified [himself] on request, for the defense made no request. Defense counsel knew all the facts defendant now cites, and he did not ask the judge to disqualify [himself]. Therefore, defendant may not raise the issue for the first time on appeal." (*Ibid.*)

#### D. The Trial Court's Ruling on the Motion to Suppress Was Correct

Mohamed moved to suppress evidence of the drugs seized from the Volkswagen. The court, after hearing testimony from Torrance Police Officer Okazaki (the officer who conducted the traffic stop on March 30) and Detective Dasner (part of the surveillance team who watched the vehicle switches on March 25 and March 30), ruled police had probable cause to conduct the March 30 traffic stop of Miguel and to impound the car based, in part, on the existence of probable cause to believe the Volkswagen was being used in a crime and contained contraband. The court also concluded that, because the vehicle was thereafter searched based on a warrant not challenged by Mohamed, the motion to suppress was denied.

Mohamed's claim on appeal is somewhat opaque. He does not seem to suggest that, to the extent the car was *properly* impounded, the warrant thereafter issued to search

it was improper.<sup>7</sup> Instead, Mohamed appears to interpose a more technical claim: the prosecution did not satisfy its burden of proof that police had probable cause to believe the Volkswagen was carrying contraband and could impound the car on the basis of that probable cause. Mohamed concedes pretextual stops are permissible when authorities have probable cause to believe there is a criminal violation. (Cf. *People v. Valenzuela* (1999) 74 Cal.App.4th 1202, 1207-1209.) However, he asserts the information obtained from the wiretaps on which the authorities relied for probable cause to believe the Volkswagen was carrying contraband could not be used to uphold the search because the prosecution did not introduce evidence at Mohamed's Penal Code section 1538.5 hearing to support the foundational showing that the wiretaps themselves were legally authorized or approved by a judge under the wiretap statutes. Absent this foundational showing, Mohamed argues, the information garnered from the wiretaps must be deemed to have been the product of an illegal search and therefore the subsequent impoundment and search of the car cannot be upheld based on that information and instead must be suppressed as "fruits of the poisonous tree" under *Wong Sun v. U.S.* (1963) 371 U.S. 471.

---

<sup>7</sup> Mohamed also does not appear to suggest the trial court erred when it concluded he did not have standing to challenge the propriety of Officer Okazaki's traffic stop of Miguel. The right to interpose a claim of violation of the Fourth Amendment is a personal right (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134), and a third party who is not a passenger in the detained vehicle ordinarily lacks standing to challenge the propriety of a traffic stop. (See, e.g., *U.S. v. Holmes* (5th Cir. 1976) 537 F.2d 227, 232.) Moreover, even assuming Mohamed had standing to claim Okazaki's stop of Miguel was improper, Okazaki testified he observed driving behavior raising a reasonable suspicion Miguel was driving while intoxicated, which dovetailed with Mohamed's testimony at trial that Miguel "appeared to be drunk" when Mohamed turned the car over to him that evening, providing ample basis for the initial stop.

We reject Mohamed's claim, for two reasons. First, Mohamed cites nothing, and our independent review of the record has disclosed nothing, to suggest the argument now asserted by Mohamed was raised below. In *People v. Tully* (2012) 54 Cal.4th 952, our Supreme Court, addressing an analogous claim involving a claimed Fourth Amendment violation, explained at pages 979 to 980:

"Constitutional claims raised for the first time on appeal are not subject to forfeiture only when 'the new arguments do not invoke facts or legal standards different from those the trial court itself was asked to apply, but merely assert that the trial court's act or omission, insofar as wrong for the reasons actually presented to the court, had the additional legal consequence of violating the Constitution.' [Citations.] However, '[a] party cannot argue the court erred in failing to conduct an analysis it was not asked to conduct.' [Citation.] [¶] Defendant contends he was unlawfully detained because the duration of the traffic stop was excessive in relation to its purpose. Additionally, he claims that Officer Painter's questions about defendant's involvement in the vandalism incident were unjustified by the purpose of the stop and lacked a separate 'reasonable suspicion' of criminal activity. He concludes that because the detention was excessive and the questioning unjustified, his consent was involuntary. Additionally, he asserts his consent to search his person was involuntary because he was not given *Miranda* advisements before consent was sought. [¶] Only the *Miranda* claim was argued below; the others are forfeited. The questions raised by these arguments--whether the duration of the stop was excessive and whether Painter's questions were proper--involve analyses the trial court was not asked to conduct and potentially required factual bases additional to those adduced at the hearing."

Mohamed below never suggested that, absent proof concerning the validity of the underlying warrant authorizing the wiretap, the court was barred from considering the wiretap evidence in evaluating whether police had probable cause to suspect the Volkswagen was being used to transport drugs. Because Mohamed's newly minted

appellate claim requires both an "analysis the trial court was not asked to conduct" *and* involved "factual bases additional to those adduced at the hearing" that the prosecution was never placed on notice were in dispute, these claims are forfeited.

Even assuming the issue was preserved, it is without merit. Mohamed makes no effort to demonstrate he has standing to challenge the wiretap evidence and, accordingly, we conclude the decision in *People v. Madrid* (1992) 7 Cal.App.4th 1888 (*Madrid*) is fatal to Mohamed's claim. In *Madrid*, a search warrant was issued to search a house shared by the defendant and her husband, and contraband was found. (*Id.* at pp. 1892-1894.) The defendant, moving to suppress the contraband, argued that because the probable cause underlying the search warrant was developed as a result of an unlawful search of a car in which her husband had been a passenger, the search warrant was the fruit of the poisonous tree and therefore the contraband found during the search of her house was subject to suppression. (*Id.* at pp. 1894-1898.) The *Madrid* court, after noting it was clear defendant was not present in the car and therefore did not have standing to challenge the search of the car, followed federal precedents and concluded she could not challenge the legality of the search warrant by asserting the information establishing probable cause for the warrant was the tainted fruit of an antecedent illegal search or seizure of a third party. (*Id.* at pp. 1896-1898.) Essentially, *Madrid* concluded a defendant may not invoke the fruit of the poisonous tree doctrine if the defendant had no protectable privacy interest in the tree itself:

"[T]he general principles of law on standing, as articulated by the high court, permit a defendant to prevail on a 'fruit of the poisonous tree' claim only if he or she has standing regarding the violation

which constitutes the poisonous tree . . . . [Citation.] Were we to accept defendant's reasoning, we would be compelled to ignore established precedent on the question of standing and instead focus on defendant's privacy interest in [the poisonous fruit] rather than on her privacy interest in the [poisonous tree]. This we cannot do." (*Id.* at p. 1898.)

Under *Madrid*, to the extent probable cause (the "fruit of the poisonous tree") for stopping and impounding the Volkswagen under Vehicle Code section 22655.5, subdivision (b), derived from allegedly improper wiretaps of telephone conversations (the purported "poisonous tree"), Mohamed was not a participant in any of those conversations and apparently concedes he lacks standing to suppress any of those conversations even had the wiretap warrant been improperly issued. Accordingly, even had Mohamed preserved his claim concerning the validity of the underlying warrant authorizing the wiretap, his motion to suppress was properly denied.

#### E. Substantial Evidence Supports the Convictions

Mohamed contends the evidence is insufficient to support the convictions because there was no substantial evidence from which a jury could have found he possessed the requisite mens rea to support the convictions on the conspiracy and substantive offenses.

His appellate claim does not appear to contest the sufficiency of the evidence to show he committed the actus reas of the crimes, because the evidence was largely undisputed that (1) he twice drove the load car across the border and to Los Angeles County; (2) the load car had a secret compartment; and (3) the secret compartment contained drugs of a sufficient quantity to permit the inference the drugs were possessed and transported for purposes of sale. Mohamed does not contest the sufficiency of the

evidence to support the finding there was a conspiracy among numerous persons to perpetrate the charged offenses; he merely claims the evidence does not support the finding that he was one of the persons who reached the requisite agreement.

*Applicable Legal Principles*

When we review a challenge to the sufficiency of the evidence to support a verdict, we review all of the evidence most favorably to the verdict and draw all reasonable inferences in support of the verdict. The question we must decide is whether there is sufficient, substantial evidence from which a reasonable jury could find the charges proved beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

" 'Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt.' " (*People v. Bloyd* (1987) 43 Cal.3d 333, 347.) " ' "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,], which must be convinced of the defendant's guilt beyond a reasonable doubt" ' " (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11), and we may neither reweigh the evidence nor reevaluate a witness's credibility. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, disapproved on other grounds in *Rundle, supra*, 43 Cal.4th at p. 151.) Where the circumstances reasonably justify the trier of fact's findings, the reviewing court's opinion that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

A conviction for criminal conspiracy requires proof of (1) an agreement between two or more persons; (2) with the specific intent to agree to and to commit the offense; and (3) an overt act committed by one or more of the parties to accomplish the object of the agreement or conspiracy. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1128.) The agreement may, and often must, be proved circumstantially. (*People v. Homick* (2012) 55 Cal.4th 816, 870.) "The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1135), and circumstantial evidence--particularly when the defendant engaged in conduct to carry out their mutual purpose--can provide sufficient proof of the mutual agreement. (*People v. Martin* (1983) 150 Cal.App.3d 148, 163; *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1464 ["The overt acts charged as part of the conspiracy can be circumstantial evidence of its existence. "Such acts may establish the purpose and intent of the conspiracy and relate back to the agreement whose purpose may be otherwise enshrouded in the hush-hush admonitions of the conspirators." "], disapproved on other grounds in *People v. Mesa* (2012) 54 Cal.4th 191, 199.)

### *Analysis*

There is substantial evidence from which a jury could infer Mohamed knew the load car he twice drove across the border and to Los Angeles County contained contraband destined to be delivered for purposes of sale. The fact Mohamed engaged in conduct to carry out the mutual purpose of the agreement provides circumstantial evidence of his intent to participate in and further the mutually-agreed goals of the

conspiracy (*People v. Martin, supra*, 150 Cal.App.3d at p. 163), and his *knowing* participation can be inferred from other evidence.

On his first foray on March 25, Mohamed chose to drive across the border around 2:00 a.m., from which a jury could infer he was hopeful that such a late hour would allow him to spend less time waiting in a line where patrolling sniffer dogs might alert on his car. Second, intercepted telephone calls showed his superiors knew (several hours *before* he actually tried to cross) that Mohamed's intention was to try to cross at an unusual hour for him, from which a jury could infer Mohamed was keeping his superiors informed of his plans. Third, intercepted telephone calls showed his superiors knew (just six hours *after* Mohamed crossed the border) that he actually crossed around 2:00 a.m., from which a jury could infer Mohamed recognized the importance of his actions and the need to keep his superiors apprised of his successful crossing. Finally, these intercepted telephone calls showed his superiors also knew (just six hours after he crossed the border) that Mohamed had been sent to secondary inspection but had cleared that inspection. A rational jury could infer the information about being sent to secondary inspection but then clearing that hurdle was peculiarly within Mohamed's knowledge (and thus showed he was updating his superiors on his progress), and could infer this information was relayed by Mohamed to his superiors to explain his concern the car might be under surveillance by law enforcement and therefore account for his decision to leave the car in a parking lot inside the United States for a few hours to let things cool off before resuming his journey to meet with Miguel.

Mohamed attempts on appeal to discount the significance of this evidence by arguing it was equally susceptible of the interpretation that, unbeknownst to Mohamed, someone in the cartel was watching the car as it crossed the border and gave that information to Alfredo. First, even assuming this circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is for the jury (not the appellate court) to decide which inference to draw. (*People v. Rodriguez, supra*, 20 Cal.4th at p. 11.) Second, Mohamed's theory assumes someone from the cartel was surreptitiously following Mohamed from 7:00 p.m. on March 24 (the time he claims he got the car with its load from Lisa) until the time he crossed the border seven hours later. The jury was certainly entitled to reject this theory in favor of the equally (if not more) reasonable inference that the cartel's real-time information on the whereabouts of the car derived from the driver rather than from surveillance of the driver. Finally, Mohamed's theory ignores that the telephone call intercepted less than seven hours after the May 25 crossing contains a statement from Alfredo that "the driver [Mohamed] relayed that he believes he was sent to secondary inspection because the paperwork wasn't done right. Meaning that the registration for the vehicle . . . wasn't done correctly." This information dovetails with Mohamed's explanation of what he was told was the reason for being sent to secondary inspection that night, but he offers no innocent explanation on appeal of how Alfredo so quickly could have learned *that* information (*peculiarly* within Mohamed's knowledge) if not from contemporaneous updates from Mohamed.

A rational jury could have inferred Mohamed was in constant contact with his superiors on March 25 *because* he knew the car carried an important and valuable cargo destined to be (and was) turned over to Miguel for further transit. A jury could further infer that, when Mohamed engaged in the same pattern of conduct on March 30, by again driving the load car across the border, again rendezvousing with the same person and again turning the load car over to Miguel for further transit, Mohamed harbored the same knowledge and intent as he had on March 25. (Cf. *People v. Gonzales* (2012) 54 Cal.4th 1234, 1258.) Because substantial evidence supports the conclusion Mohamed knew the car contained contraband, and it is undisputed he engaged in conduct to carry out the object of the agreement, there is substantial evidence to support the convictions for both the conspiracy offenses and the substantive offenses.

F. Cumulative Error

Mohamed contends the cumulative errors, even when individually harmless, denied him a fair trial. However, we have concluded there were no errors to cumulate.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.