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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

SHEILA RACHELLE DAHL,

Defendant and Appellant.

E062296

(Super.Ct.No. RIF1302890)

OPINION

APPEAL from the Superior Court of Riverside County. Jeffrey Prevost, Judge.

Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Charles C. Ragland, Scott C. Taylor and Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

Following a jury trial, defendant and appellant Sheila Rachelle Dahl was convicted of presenting a false claim for payment of loss under an insurance policy (Pen. Code, § 550, subd. (a)(1)), making a false statement in support of a false insurance claim (Pen. Code, § 550, subd. (b)(1)), and falsely reporting a crime (Pen. Code, § 148.5, subd. (a)). Defendant was sentenced to three years of probation. She appeals, contending the trial court erred in admitting certain evidence and denying her motion for new trial, her counsel was ineffective, and the cumulative error doctrine applies. We affirm.

## I. FACTS

In March 2011, defendant purchased a 2008 Mercedes Benz SL550 and financed it through Alaska USA Federal Credit Union. In March 2012, defendant began experiencing difficulty making her payments. The credit union contacted her on June 26, 2012, regarding the delinquent payments. Defendant agreed to pay all past-due amounts by June 29, 2012. Also, the registration for the vehicle had expired on March 24, 2012, and the Department of Motor Vehicles (DMV) had no record of any payment being received.

On June 26, 2012, defendant reported her car had been stolen from a Walmart parking lot in Moreno Valley. Riverside County Deputy Sheriff Krysti Bellavia arrived at the Walmart around 10:30 p.m. and spoke to defendant. According to defendant, she had parked in the front area of the parking lot about 9:00 p.m., entered the store, where she shopped for approximately one and a half hours, and when she walked out to the parking lot, she did not see her vehicle. Defendant admitted she was behind in her car payments, but she added that she had made arrangements to make payments.

Defendant reported the theft to her insurance company and spoke with Lisa Roberts, a claims specialist with Mercury Insurance. Roberts noted red flags regarding defendant's claim, i.e., her account was not current and she had one prior theft claim. The claim was referred to Mercury's special investigations unit and was assigned to Michael Lamb. On July 9, 2012, Lamb interviewed defendant, who reported that she had parked 10 rows back, in the middle of the parking lot. Defendant had a key to her vehicle but refused to give it to Lamb. Lamb examined the scene of the reported theft, i.e., Walmart, and reviewed the surveillance video.

According to the surveillance video, defendant entered the store at 9:36 p.m. The video showed that she walked from the east end of the parking lot, near a Wendy's fast food restaurant and an Arco gas station. Carlos Rios, a Walmart loss prevention officer, testified that his review of the video did not show her driving into the parking lot, parking, and then exiting. Rather, he noted several empty parking spaces between where he first saw defendant walking and the entrance of the store. He had no doubt that the woman depicted in the video walking through the parking lot and entering the store at 9:36 p.m. was defendant. Because the video did not show defendant parking her vehicle, Rios checked video from other cameras in the parking lot to confirm whether defendant parked farther out towards the garden center. He never saw her in any other videos of the parking lot. Rios copied the relevant video onto a disk and provided it to Detective Melbrech of the Riverside County sheriff's office.

Lamb showed the video to defendant during her deposition on October 17, 2012. Defendant confirmed that she was the woman talking to the deputies; however, she was

not sure whether she was the person entering the store at 9:36 p.m. After her attorney interjected, defendant's initial equivocal response became a definitive denial that the person on the video walking in the store was her. Lamb further testified that on June 23, 2005, defendant had reported that her 1995 Mercedes was stolen from the parking lot of a Walmart in Colton. She claimed she went to the Walmart around 9:30 p.m. and completed her shopping, and when she came outside, her car had been stolen. She filed a claim with Mercury Insurance, and the claim was settled for a total amount of \$18,552.23.

The prosecution also introduced testimony of Chad Tredway, an automotive forensic examiner, on the type of ignition system and anti-theft systems defendant's vehicle was equipped with and how they could be bypassed or compromised. He testified that the only manner in which defendant's vehicle could be stolen was by (a) using the vehicle's key, (b) towing the vehicle, or (c) using proprietary software of Mercedes Benz to hack the vehicle's computer system.

Defendant testified. She denied that she had defrauded the insurance company or filed a false police report. She denied she was the person seen on the surveillance video walking into the Walmart at 9:36 p.m. And she denied having any financial issues. She testified she received financial support from Frank Williams, her husband, and Frank Cooper, her husband's uncle. On cross-examination, she admitted she had recently filed for bankruptcy, which she understood to be a financial issue. She denied that Williams and Cooper were the same person.

Williams testified, stating that Cooper was his uncle, he had never used or signed Cooper's name, and if defendant had wanted to get rid of her Mercedes, all she had to do was "go to the dealer." Williams denied knowing anything about Cooper's financial status, including his bankruptcy filings in 2012 and 2013.

## II. DISCUSSION

### **A. Admission of Evidence Code Section 1101, Subdivision (b) Evidence.**

Defendant contends the trial court prejudicially erred when it admitted evidence of her 2005 insurance claim for vehicle theft.

#### *1. Additional Background.*

Before trial, the prosecution moved in limine to admit evidence of defendant's 2005 insurance claim to Mercury Insurance for a stolen vehicle. (Evid. Code, § 1101, subd. (b).) The prosecutor argued that the circumstances of the 2005 insurance claim were "eerily similar" to those of the present claim. Defense counsel argued the evidence would require a "mini trial" and would be too prejudicial. Following argument, the trial court granted the prosecution's motion. Acknowledging the requirement of an expenditure of time to explain the details of the 2005 claim, the court opined that the "two occurrences are sufficiently similar to be highly probative with respect to the intent and the possible common plan or scheme motivation with respect to the more current event."

#### *2. Applicable Law.*

Evidence Code section 1101, subdivision (a) prohibits the admission of evidence of a person's character to prove a person's conduct on a specified occasion. However,

such evidence is admissible to prove a material fact such as identity, common design or plan, or intent. (Evid. Code, § 1101, subds. (a), (b); *People v. Lenart* (2004) 32 Cal.4th 1107, 1123; *People v. Kipp* (1998) 18 Cal.4th 349, 369; *People v. Ewoldt* (1994) 7 Cal.4th 380, 393, superseded by statute on other grounds as stated by *People v. Britt* (2002) 104 Cal.App.4th 500, 505.) To be admissible for this purpose, the charged and uncharged offenses must be sufficiently alike to support a rational inference of identity, common design or plan, or intent. (*Kipp, supra*, at p. 369.) The actual degree of similarity required depends upon the material facts to be established. The highest degree of similarity between charged and uncharged crimes is required to establish the uncharged crime's relevancy to prove identity. (*Ewoldt, supra*, at p. 403.) "For identity to be established, the uncharged misconduct and the charged offense must share common features that are sufficiently distinctive so as to support the inference that the same person committed both acts. [Citation.] 'The pattern and characteristics of the crimes must be so unusual and distinctive as to be like a signature.' [Citation.]" (*Ibid.*) A lesser degree of similarity is required to show intent than identity or common plan, because the recurrence of similar conduct tends to negate the possibility that it occurred by accident or inadvertence. (*Id.* at p. 402.)

Notwithstanding the above, evidence of prior acts that is admissible to show intent or common plan may be excluded if its probative value is substantially outweighed by the probability that its admission will require undue consumption of time or create a substantial danger of undue prejudice, confusion of the issues, or misleading the jury. (Evid. Code, § 352.) Prejudice in this context is not the prejudice or damage to a defense

that naturally flows from probative evidence; rather, it is evidence that ““uniquely tends to evoke an emotional bias against the defendant as an individual *and which has very little effect on the issues.*”” (*People v. Gionis* (1995) 9 Cal.4th 1196, 1214.) However, nothing in the statute “prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as . . . intent . . . ) other than his or her disposition to commit such an act.” (Evid. Code, § 1101, subd. (b).)

“We review a trial court’s rulings on the admission and exclusion of evidence for abuse of discretion. [Citation.]” (*People v. Chism* (2014) 58 Cal.4th 1266, 1291 (*Chism*).)

### 3. *Analysis.*

Here, defendant does not challenge the similarity between her prior insurance claim and her current claim. Rather, she asserts that “the evidence of the 2005 claim was not relevant to prove intent, motive, or common plan . . . .” We disagree. The similarities between the two claims are striking. In both claims defendant parked her car in the parking lot of a Walmart store; she went inside and shopped for more than an hour after 9:00 p.m.; after shopping defendant returned to the parking lot and could not recall where she had parked; defendant claimed that her car was stolen; the thefts occurred in the month of June; both of her vehicles were Mercedes Benz; both were insured by the same company, Mercury; and neither vehicle was recovered. The similarities between the two claims supports the trial court’s determination that the two incidents were sufficiently and uniquely similar, and that evidence of the 2005 claim would be probative of defendant’s intent in the present claim to defraud her insurance company. Regardless

of whether or not her 2005 claim was fraudulent, the claim itself establishes defendant's knowledge of how Mercury Insurance processed claims. Such knowledge is relevant to defendant's intent and actions involving her current claim.

Moreover, the presentation of the facts of defendant's 2005 insurance claim did not take much time because the evidence was admitted through the testimony of Lamb, the investigator from Mercury Insurance assigned to defendant's 2012 claim. Of the 94 pages of Lamb's testimony, only 12 related to defendant's 2005 insurance claim. While the evidence was prejudicial, its probative value outweighed its prejudicial impact; among other things, it explained the need to further investigate defendant's 2012 insurance claim.

Even if the trial court's ruling could be construed as error, defendant was not prejudiced as a result. Errors in the admission of uncharged offenses are prejudicial only where it is reasonably probable that the defendant would have received a more favorable trial outcome if the disputed evidence had been excluded. (*People v. Malone* (1988) 47 Cal.3d 1, 22, citing *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*)). Here, the surveillance video and the testimony of Walmart's loss-prevention officer tracked defendant's path the moment she arrived at the Walmart. According to this evidence, defendant never parked her car in the Walmart parking lot. In addition to this evidence, the jury heard that defendant was behind in her loan payments, had not renewed her car's registration, had a bank balance of \$400, and had not made the monthly payment on her credit card, which had an outstanding balance of \$2,600. Moreover, the jury was instructed that the evidence of defendant's claim for a stolen vehicle in 2005 "is not

sufficient by itself to prove that the defendant is guilty of insurance fraud. The People must still prove each charge beyond a reasonable doubt.” (CALCRIM No. 375.) We may presume the jury understood and followed this instruction. (*People v. Prince* (2007) 40 Cal.4th 1179, 1295.) Based on the foregoing, any error that occurred in the trial court’s ruling in this case was harmless under any standard. (*Chapman v. California* (1967) 386 U.S. 18, 24; *Watson, supra*, at p. 836.)

## **B. Denial of Motion for New Trial.**

Defendant contends the trial court erred in denying her motion for new trial based on its erroneous admission of prejudicial evidence. More specifically, she contends the evidence of her bankruptcy filings and both Cooper’s financials and identity confused the jury and “improperly bolster[ed] the prosecutor’s case with innuendo of a deeper fraud than the one charged . . . .” She further argues that the prosecutor violated Penal Code section 1054 by failing to timely disclose the evidence.

### *1. Additional Background.*

While cross-examining defendant, the prosecutor introduced as evidence certified copies of defendant’s July and August 2014 bankruptcy filings. Defendant explained that her counsel advised her to file bankruptcy because the insurance company refused to pay her claim on her Mercedes and the bank was seeking payment on the loan. The prosecutor further questioned defendant about Cooper’s bankruptcies in 2012 and 2013; however, defendant claimed to be ignorant of his financial circumstances. When the prosecutor asked whether she was aware that when Cooper’s debts were discharged as of

June 27, 2012,<sup>1</sup> any money paid on an insurance claim would not go to the creditors, defendant replied she was not. She further denied knowledge of Cooper's attempt to sue Mercury Insurance in 2000 for \$32,000, claiming theft. The prosecutor questioned defendant as to whether Williams and Cooper were "the same person" or "taking each other's identities." Defendant denied both suggestions. The prosecutor showed defendant a copy of Williams's driver's license, dated 2001, and Cooper's DMV printout, reflecting no information after 2000. Defendant was also shown a copy of the 2005 police report of the theft of her 1995 Mercedes, where the officer had written "husband" next to Cooper's name. After viewing a series of signatures in either the name Williams or Cooper, defendant acknowledged that the signatures looked similar. Defendant testified that she had physically seen Cooper, he was younger than Williams, and that they were not the same person. In his testimony, Williams denied going by the name of Cooper, denied signing documents in Cooper's name, including bankruptcy documents filed in 2012 and 2013, and denied being aware of the date Cooper's debts were discharged.

After all the witnesses had testified, the prosecution requested that copies of the bankruptcy filings of defendant and Cooper, and DMV records and documents regarding Williams's and Cooper's signatures, be admitted into evidence. Defense counsel objected on the ground that defendant had no knowledge of the bankruptcy filings. The trial court questioned the relevancy of the information regarding Cooper as it related to

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<sup>1</sup> According to the report, Cooper's debts were discharged on June 27, 2012, and his bankruptcy was terminated on August 27, 2012.

the charges pending against defendant; however, it also noted the relevance if Cooper and Williams were the same person. The prosecutor argued the evidence “goes towards [defendant’s] credibility” about her funds, and that the “nexus between Williams and Cooper potentially being the same person or using the same ID,” coupled with the fact that Cooper had filed multiple bankruptcies, “that all goes to refute [d]efense’s case.” Following further argument, the trial court admitted the evidence. The court stated: “I think there is sufficient evidence for the trier of fact to make an inference that Mr. Williams and Mr. Cooper are indeed one in [*sic*] the same persons, and that would have a bearing upon a motive to possibly abscond with a vehicle in 2012.”

After the jury verdict, defendant moved for a new trial on the grounds that she “was unfairly prejudiced by evidence admitted by the court that was produced by the prosecuting attorney at the last moment, during trial, as well as, additional evidence also admitted/submitted during trial that was irrelevant to the issue in the case.” Defendant argued that the bankruptcy filings evidence should have been disclosed prior to the prosecution resting its case and her testimony, because the evidence was irrelevant. Defendant further argued that because the prosecution failed to disclose the evidence relating to Cooper’s identity in a timely manner, she was denied a fair trial.

In opposition to the motion for new trial, the prosecutor argued he was not required to disclose the evidence because it was used for impeachment purposes only. Even if disclosure were required, the prosecutor argued that defendant failed to meet her burden of establishing prejudice because the evidence was not part of the prosecution’s case in chief and had no effect on the trial.

The trial court denied the motion for new trial, finding that the evidence was introduced “solely for the purposes of impeachment and relevant only to the credibility of the witness, directly [defendant], and potentially Mr. Cooper being involved in a scheme is something that could be inferred . . . .” The court further found no prejudice, stating, “it’s not reasonably probable that a different result would have ensued had the evidence been previously disclosed and excluded from admission.”

### 2. *Applicable Law.*

This court reviews the trial court’s ruling on a motion for new trial under the deferential abuse of discretion standard. (*People v. Howard* (2010) 51 Cal.4th 15, 42-43.) Similarly, as previously stated, a trial court’s evidentiary rulings are reviewed for abuse of discretion. (*Chism, supra*, 58 Cal.4th at p. 1291.)

### 3. *Analysis.*

The trial court admitted evidence of Cooper’s financials for impeachment purposes. The court reasoned that the evidence was relevant to defendant’s credibility because the jury could determine that she had lied when testifying about her relationship with Cooper. According to defendant, Cooper was her husband’s uncle, she lived in one of his homes, and he sometimes would help her financially. The prosecutor offered the following contradictory evidence: (1) Defendant’s prior statement that Cooper was her husband, contradicting her claim that he was her husband’s uncle; (2) samples of Cooper’s and Williams’s signatures showing their similarity and suggesting that Cooper and Williams were the same person, despite defendant’s testimony otherwise; and (3) the discharge of Cooper’s debts via bankruptcy on the same day defendant reported her

vehicle stolen, contradicting her testimony that Cooper was in a position to provide defendant with financial support.

Penal Code section 1054.1 provides in relevant part: “The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies: [¶] . . . [¶] (e) Any exculpatory evidence. [¶] (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial . . .” (Pen. Code, § 1054.1, subs. (e), (f).) However, there is no requirement that the prosecutor provide impeachment evidence intended to be used during cross-examination of defense witnesses. In fact, such disclosure has been found not to fall within the discovery obligations of the prosecution. (*People v. Tillis* (1998) 18 Cal.4th 284, 292-293.)

Here, the record demonstrates that the prosecutor had no intention of calling Cooper as a witness and only planned to reference the bankruptcy filings and Cooper’s financial information and identity for impeachment purposes, i.e., to undermine defendant’s credibility and impeach her testimony that Cooper was in a position to assist her financially. Even assuming the prosecution should have immediately provided the defense with the evidence, it was harmless error. It is not reasonably probable that defendant would have realized a more favorable verdict had the evidence been provided any sooner or been excluded. (*Watson, supra*, 46 Cal.2d at p. 836.) As previously discussed, there was substantial independent evidence of defendant’s guilt.

### **C. Ineffective Assistance of Counsel.**

Alternatively, defendant contends she is entitled to a new trial because her counsel rendered ineffective assistance by failing to timely object to the evidence she claims was improperly admitted.

#### *1. Applicable Law.*

To establish ineffective assistance of counsel under either the federal or state guarantee, a defendant must show that counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and that counsel's deficient performance was prejudicial, i.e., that a reasonable probability exists that, but for counsel's failings, the result would have been more favorable to the defendant.

(*Strickland v. Washington* (1984) 466 U.S. 668, 687-688; *People v. Waidla* (2000) 22 Cal.4th 690, 718.) "If a claim of ineffective assistance of counsel can be determined on the ground of lack of prejudice, a court need not decide whether counsel's performance was deficient. [Citations.]" (*In re Crew* (2011) 52 Cal.4th 126, 150 (*Crew*).)

#### *2. Analysis.*

As previously noted, defendant fails to establish prejudice from the trial court's evidentiary rulings. The independent evidence supports a finding of guilt. Thus, there is no reasonable probability that, but for counsel's alleged error in failing to timely object to the evidence, the jury would have reached a different result. As such, defendant's ineffective assistance of counsel claim fails. (See *Crew, supra*, 52 Cal.4th at p. 150.)

**D. Cumulative Error Doctrine.**

Defendant lastly asserts the alleged errors cumulatively compromised her due process rights and were prejudicial. ““We have either rejected on the merits defendant’s claims of error or have found any assumed errors to be nonprejudicial. We reach the same conclusion with respect to the cumulative effect of any assumed errors.”” (*People v. Cole* (2004) 33 Cal.4th 1158, 1235-1236.)

**III. DISPOSITION**

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P. J.

MCKINSTER

J.