

Filed 10/10/07

CERTIFIED FOR PARTIAL PUBLICATION*

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARIA QUIROZ,

Defendant and Appellant.

D047683

(Super. Ct. No. SCD160822)

APPEAL from a judgment of the Superior Court of San Diego County, Browder
A. Willis III, Judge. Affirmed.

Laura L. Furness, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Senior Assistant Attorney General, Scott C. Taylor,
Supervising Deputy Attorney General and Kelley Johnson, Deputy Attorney General, for
Plaintiff and Respondent.

* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for
publication with the exception of parts III.B., III.C., III.D., and III.E.

I.

INTRODUCTION

Defendant Maria Quiroz appeals from a judgment of conviction and sentence arising from her participation in a widespread and sophisticated check forgery scheme. As one of 34 codefendants in a 66-count indictment, Quiroz was charged with conspiracy to defraud another, grand theft and forgery of checks. Quiroz admitted that in 2003 she sold her bank account information and personal information to two of her codefendants. After Quiroz sold her information, stolen and forged checks were deposited into her bank account. A few days after the forged checks were deposited into Quiroz's account, someone withdrew thousands of dollars from the account. Quiroz contended in her defense that she believed her account was going to be used to hide drug money, not to pass stolen and forged checks. A jury convicted Quiroz of one count of conspiracy to defraud another and one count of grand theft.

Quiroz challenges the judgment of conviction on seven grounds: (1) that the trial court erred in refusing to hold a hearing to determine whether Quiroz was a minor at the time she committed the alleged offenses; (2) that the court erred in failing to stay the criminal proceedings in favor of juvenile court jurisdiction of Quiroz's case, because Quiroz was 17 years old when she agreed to sell her account information to a codefendant; (3) that the juvenile court should have presumptive jurisdiction over a matter in which the alleged criminal conduct begins when the defendant is a minor and continues after the defendant's 18th birthday; (4) that the court violated Quiroz's Fifth Amendment right against self-incrimination by admitting in evidence pretrial statements

she made to postal inspectors before she had been given *Miranda*¹ warnings; (5) that the court erred by admitting evidence of Quiroz's admissions to postal investigators because the admissions were induced by a promise that she would not be prosecuted if she told them the truth; (6) that the prosecutor engaged in misconduct when the prosecutor asked Quiroz a series of questions that effectively forced her to testify that the postal inspectors had lied on the witness stand; and (7) that there was insufficient evidence to support her conviction for conspiracy to defraud.

While we conclude that none of these contentions raises a meritorious ground for reversing Quiroz's conviction, we agree that the prosecutor's questions about whether the postal inspectors had lied during their trial testimony were improper. However, it is not reasonably probable that the jury would have reached a result more favorable to Quiroz if these questions had not been asked. We therefore affirm Quiroz's conviction.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Procedural background*

By indictment filed March 11, 2005, the People charged Quiroz with conspiracy to defraud another of property, grand theft and forgery of checks. Quiroz was charged together with 33 other defendants in a 66-count indictment.

On September 2, 2005, Quiroz moved to suspend the proceedings pursuant to Welfare and Institutions Code section 604, subdivision (a), on the basis that she was

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

under the age of 18 on the date the alleged offense occurred. The trial court denied the motion to suspend proceedings.

Just before the trial began, Quiroz renewed her request to suspend the proceedings pursuant to section 604, subdivision (a) of the Welfare and Institutions Code. The court denied the request the following day. Quiroz again renewed her request to suspend the proceedings later in the trial. The court denied this request as well.

The court instructed the jury on November 3, 2005. Outside the presence of the jury, Quiroz moved for a mistrial on the ground that the prosecutor had asked Quiroz a series of questions on cross-examination that forced her to say that the postal inspectors who had testified against her were liars. In response to Quiroz's motion, the court read the stricken testimony to the jury and instructed the jury to disregard it. The next day, Quiroz again moved for a mistrial on the same ground. The trial court denied the motion.

On November 4, 2005, the jury found Quiroz guilty of one count of conspiracy to defraud and one count of grand theft, and not guilty of forgery.

On December 9, 2005, the trial court sentenced Quiroz to formal probation for five years. Quiroz filed a timely notice of appeal.

B. *Factual background*

1. *The prosecution's case*

Sometime in January 2003, Quiroz's friend, Erica,² told Quiroz that Erica's boyfriend, Gilbert Franco, would be calling Quiroz to talk with her about how she could

² Erica is identified by only her first name in the trial transcript.

make some money. Franco called Quiroz later in January and told her he needed her Automatic Teller Machine (ATM) card and personal identification number (PIN), her social security number, and her identification card. Quiroz agreed to sell her personal information to Franco, however, precisely when she agreed to do so was disputed.

Quiroz testified that she gave Franco her Washington Mutual account information and her personal information three or four days before she turned 18 years old, which was on February 3, 2003. A postal inspector who interviewed Quiroz about her participation in the check forgery scheme testified that Quiroz told the inspector that she agreed to give Franco her account information approximately a month after she had spoken with Erica.

When Quiroz gave Franco her personal and account information, Franco told her not to contact the bank until "they" were finished using her account. Two weeks after Quiroz provided Franco with her information, Franco's brother, Juan Guzman, called Quiroz and told her he had money for her. Quiroz met Guzman at a nearby McDonald's. Guzman gave Quiroz \$1,000 and promised to give her another \$2,000 at a future date. Guzman later called Quiroz and told her that he would not be giving her any more money because her account had been "frozen."

On February 18, 2003, someone deposited a check for \$7,500 into Quiroz's bank account. The check was drawn on an account held by James and Karen Turnbull, and was payable to Quiroz. Bank records show that a withdrawal of \$100 was made from Quiroz's account that same day. On February 19, 2003, \$300 was withdrawn from the account. On February 20, 2003, someone made withdrawals of \$800, \$3,000 and \$4,500 from Quiroz's account at one of the branch offices. Also on February 20, 2003, someone

made an \$8,000 ATM deposit into Quiroz's account. That same day, Washington Mutual received and processed a check for \$6,500 from Florencia Cacho, made payable to Quiroz. The check was eventually returned because Cacho had insufficient funds in her account to cover the check.

Washington Mutual has a practice of sending account holders either the originals, or copies of returned checks. Two or three weeks after Quiroz met with Guzman, she received two checks from her bank that had been deposited into her account. None of the handwriting on the checks was Quiroz's, and she had never seen the checks before. Washington Mutual had no record of Quiroz attempting to contact the bank regarding her account.

Postal Inspectors John Lund and Ana Flores investigated mail theft complaints for the United States Postal Service. In 2003, Lund began to notice a particular crime recurring. The victims would write checks to various companies and put the checks in the mail. The checks were stolen before they arrived at their intended destinations. The amounts and payees on the checks were then altered, and the amounts were often changed to large, even numbers, such as "five or \$6,000." The checks would be deposited into legitimate accounts, and someone would subsequently make withdrawals from those accounts. Sometimes an ATM card was used to withdraw large sums of money, and other times an ATM card and/or personal identification card were used to make a withdrawal inside a bank office. This fraud succeeded because the withdrawals were made only one or two days after an altered check was deposited, and the check

would not be returned for insufficient funds until a week or two after having been deposited.

Lund noticed a pattern in these cases: the checks were stolen from the mail in north San Diego County, and the holders of the deposit accounts were between 18 and 24 years old and lived in south San Diego County. Lund estimated that he reviewed at least 70 separate cases that exhibited this pattern.

In early 2003, James Turnbull mailed two checks to the "County Enrichment Program." Neither check reached its intended destination. When Turnbull noticed that \$7,500 had been withdrawn from his account for a check he had written for \$65, Turnbull contacted his bank. When Turnbull was given a copy of his check, he saw that the payee and the amount of the check had been altered. He did not recognize the handwriting.

A "few years" before the trial in this case, Alice Toothacre mailed a \$79 check to her dentist. The check was stolen from the mail, altered, and processed in the amount of \$8,000.

On October 16, 2003, Postal Inspectors Lund and Flores contacted Quiroz at her home. The inspectors asked Quiroz about what had happened with her account earlier that year. Quiroz initially denied any knowledge of how her account had come to be used to pass forged checks, and claimed that her wallet had been stolen. Later during the interview, Quiroz admitted that she had sold her account information to Franco.

2. *The defense*

Quiroz testified that in early January 2003, her "best friend" Erica called Quiroz and asked her if she wanted to make some money. Quiroz asked what she would have to

do, and Erica told Quiroz that Franco would call her. According to Quiroz, Erica did not provide any details about the plan.

Quiroz stated that she met with Franco three days before her 18th birthday and gave him her bank account information and other personal information. She met with Guzman approximately two weeks after she gave her information to Franco. Guzman paid her \$1,000. At a later date, Guzman called Quiroz and told her he would not be giving her more money because her account had been frozen and he could no longer use it.

About two or three weeks after Quiroz met with Guzman, Washington Mutual mailed Quiroz the checks drawn on the Turnbull and Cacho accounts that had been deposited into Quiroz's account. Quiroz was "suspicious" of the checks and thought they may have been forged.

Quiroz testified that she did not know that Franco intended to do something illegal with her account information, and that in providing her information to Franco, she did not "intend to steal money from anybody."

III.

DISCUSSION

A. *The trial court did not err in allowing Quiroz to be prosecuted as an adult rather than as a juvenile*

Quiroz presents three related arguments challenging the trial court's handling of her case with regard to her age at the time of the offenses. Quiroz first contends that the court erred in refusing to hold a hearing to determine whether she was a minor at the time

she committed the alleged offenses. She also contends that the trial court erred in failing to stay the criminal proceedings and transfer the case to the juvenile court because she was 17 years old when she agreed to sell her account information to a codefendant. She further asserts that, as a general rule, the juvenile court should have presumptive jurisdiction over cases in which the alleged criminal conduct begins when the defendant is a minor, even if the criminal conduct continues after the defendant's 18th birthday.

In challenging the trial court's refusal to hold a hearing as to her age and/or to transfer the case to the juvenile court, Quiroz relies on Welfare and Institutions Code section 604, subdivision (a), which provides:

"Whenever a case is before any court upon an accusatory pleading and it is suggested or appears to the judge before whom the person is brought that the person charged was, at the date the offense is alleged to have been committed, under the age of 18 years, the judge shall immediately suspend all proceedings against the person on the charge. The judge shall examine into the age of the person, and if, from the examination, it appears to his or her satisfaction that the person was at the date the offense is alleged to have been committed under the age of 18 years, he or she shall immediately certify [the matter] to the juvenile court of the county" (Welf. & Inst. Code, § 604, subd. (a).)

The statutory basis for juvenile court jurisdiction over juvenile offenders derives from Welfare and Institutions Code section 602, subdivision (a), which states: "Except as provided in subdivision (b), any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." The burden of proving that the defendant was under

the age of 18 at the time of the offense rests with the party seeking to establish that the defendant was a minor. (*People v. Nguyen* (1990) 222 Cal.App.3d 1612, 1618-1619.)

Although the trial court did not hold a formal hearing as to Quiroz's age at the time of the offense, the court did examine evidence the defense presented, including Quiroz's birth certificate, and determined that some of the alleged overt acts in furtherance of the charged conspiracy had occurred after Quiroz had turned 18 years old. The record supports this conclusion. Quiroz, however, attempts to focus attention only on her overt act of agreeing to sell her information to Franco and turning the information over to him, which, according to Quiroz, occurred three days before she turned 18.

At the time Quiroz made her first request pursuant to Welfare and Institutions Code section 604, subdivision (a) in September 2005, the trial court implicitly accepted defense counsel's representation that Quiroz turned 18 on February 3, 2003. However, the court observed that, based on grand jury testimony, the People could amend the indictment to allege that the acts began on February 3, 2003, rather than on February 1, 2003, thereby eliminating any issue as to Quiroz's age at the time of the offenses. The court also noted that even if Quiroz may have been a minor when she first became involved in the offenses, her involvement continued after she became an adult, stating, "[T]his is a situation in which we have continuing conduct. It is not as though one act took place when Ms. Quiroz was a minor and another act when she was an adult. The conspiracy charge is one of a continuing act or continuing conduct."

On October 28, 2005, Quiroz renewed her request for transfer to the juvenile court, and offered in evidence her birth certificate, which showed that she was born on

February 3, 1985. The court took the matter under submission, and considered it again on October 31, just prior to trial. The court concluded:

"I've had a chance to review all the paperwork, I've had a chance to review Welfare and Institutions Code Section 604, the laws of conspiracy, and all the facts that were presented. And what I have concluded, since there is no requirement that jurors unanimously agree as to which overt act occurred and which overt act was committed in furtherance of the crime, that fact is not a controlling factor, because the jury – I mean, the jury can make a determination that the overt acts that they're relying on occurred after February 3rd, just as well as they could make a finding that they may have occurred before. And since again they don't have to agree unanimously, I don't see it as an issue that warrants a suspension of criminal proceedings for an age determination. [¶] I'll take it at face value based on the evidence presented, the birth certificate, that the defendant was 18 on February 3rd, and I don't find that there is a legal impediment to the People's filing the amended, or seeking to amend by interlineation to amend the amended indictment."³

The trial court gave sufficient consideration to Quiroz's request regarding juvenile court, and clearly was not satisfied that Quiroz was a juvenile "at the date the offense [wa]s alleged to have been committed." (Welf. & Inst. Code, § 604, subd. (a).) The court did not err in concluding that if the jury could find that Quiroz was an adult at the time she committed any of the alleged crimes, then the trial court was not required to certify the case to juvenile court.

Quiroz also argues that the trial court erred in not transferring her case to juvenile court at some point during the trial because the evidence presented at trial demonstrated that she sold her account information to Franco before she turned 18. In rejecting two

³ The trial court allowed the prosecution to amend the indictment to allege that the charged offenses had occurred on or about February 3, 2003, through March 31, 2003.

additional requests for transfer to juvenile court that Quiroz made during trial, the court reiterated that the jury was not required to agree unanimously as to what constituted the overt act necessary to establish a conspiracy. The court also noted that it was for the jury to determine whether the conspiracy was completed as soon as Quiroz provided Franco with her bank account and personal information, or rather, whether some later act completed the conspiracy.

Conspiracy "is the classic example of a continuing offense because by its nature it lasts until the final overt act is complete. [Citations.]" (*People v. Becker* (2000) 83 Cal.App.4th 294, 297-298.) "The general rule is that a 'conspiracy usually comes to an end when the substantive crime for which the coconspirators are being tried is either attained or defeated.' [Citation.] '[An] insurance conspiracy would normally . . . terminate[] upon the receipt of the insurance proceeds.' [Citation.] 'It is for the trier of fact--considering the unique circumstances and the nature and purpose of the conspiracy of each case--to determine precisely when the conspiracy has ended.' [Citations.]" (*People v. Hardy* (1992) 2 Cal.4th 86, 143.)

In this case, uncontroverted evidence established that forged checks were deposited into Quiroz's account on February 18 and 20, 2003. The trial court thus correctly determined that the jury could have found Quiroz guilty of a conspiracy that continued at least until that time, which would mean that Quiroz would have been an adult during some portion of the conspiracy. The trial court thus did not err in allowing this case to proceed in the superior court rather than transferring it to juvenile court.

Quiroz argues in the alternative that even if her crime was a continuing one that began when she was a juvenile but continued after she reached the age of majority, this court should nevertheless conclude that it was error to try her as an adult. According to Quiroz, "[s]ocial policy, justice, and the Legislative purposes of the juvenile court system dictate that where a defendant is a minor during any part of her offense, the juvenile court should have presumptive jurisdiction in order to ensure the proper adjudication of the case."

Like the parties, we have found no reported California case that is directly on point on this issue. There are, however, a limited number of federal cases in which courts have concluded that a defendant charged with conspiracy may be tried as an adult if the defendant participated in the conspiracy as an adult, even if the defendant was a minor when he or she first became involved in the conspiracy. (See *United States v. Thomas* (D.C. Cir. 1997) 114 F.3d 228, 238-239 ["a defendant charged with conspiracy may be tried as an adult even if he first became involved in the conspiracy while still a minor, so long as he continues to participate in the conspiracy after reaching the age of eighteen"]; *United States v. Strothers* (D.C. Cir. 1996) 77 F.3d 1389, 1392 [the Federal Juvenile Delinquency Act "'does not . . . prevent an adult criminal defendant from being tried as an adult simply because he first became embroiled in the conspiracy with which he is charged while still a minor'"]; *United States v. Maddox* (6th Cir. 1991) 944 F.2d 1223, 1233 ["one who enters a conspiracy prior to his eighteenth birthday can be tried as an adult if he continues in the conspiracy after that time"].) Although these cases were decided under the Federal Juvenile Delinquency Act, which provides the statutory basis

for juvenile court jurisdiction in the federal system, the underlying principle applies with equal force in this case. We hold that when a defendant's participation in a conspiracy begins while the defendant is a minor, but continues after the defendant's 18th birthday, the trial court is not required to transfer the case to juvenile court. Rather, the defendant may be tried as an adult.

Contrary to Quiroz's assertions, there is no sound policy reason for the juvenile court to have presumptive jurisdiction under these circumstances. In a case in which a defendant's participation in a crime begins while the defendant is a minor and continues after the defendant becomes an adult, that defendant has engaged in criminal conduct as an adult, and should not escape the consequences of that conduct simply because he or she first became involved in the conduct before reaching the age of majority.⁴

B. *The trial court did not err in allowing the prosecutor to introduce in evidence statements Quiroz made to postal inspectors*

Quiroz contends that the trial court violated her Fifth Amendment right against self-incrimination by admitting in evidence pretrial statements she made to postal inspectors. She asserts that the court should have excluded her statements because the inspectors did not give her *Miranda* warnings before questioning her. We conclude that

⁴ Quiroz asserts that the reason California maintains separate court systems for adults and minors is to ensure that juvenile offenders receive treatment and rehabilitation, and that adult offenders receive punishment. Even assuming Quiroz's description of the purpose underlying our juvenile and adult criminal justice systems is accurate, such goals do not counsel in favor of presumptively treating as juveniles persons who engaged in a continuing crime while a minor and then as an adult. Those individuals chose to continue their criminal conduct as adults, and should face the consequences of such a choice.

Miranda warnings were not required because Quiroz was not in custody at the time the postal inspectors questioned her.

1. *Additional background*

Quiroz moved to exclude statements she made to Postal Inspectors Lund and Flores about her involvement in the forgery scheme. Quiroz claimed that the inspectors should have advised her of her *Miranda* rights before talking with her, because, she maintained, she was in custody at the time of the interview. The court held a hearing on the motion on October 31, 2005.

At the hearing, Inspector Lund testified that he spoke with Quiroz at her home on October 16, 2003. Lund explained that he had received information that forged checks had been deposited into Quiroz's bank account, and that he wanted to schedule an interview with Quiroz but could not find a telephone number for her. Because Lund did not have a telephone number for Quiroz, Lund and Flores went to Quiroz's house to try to set up a time to interview her. Lund was not in uniform, but rather, was dressed casually in jeans.

When Inspectors Lund and Flores arrived at Quiroz's home, Quiroz's mother, Maria Acevedo, answered the door. Lund and Flores explained to Acevedo that they were United States postal inspectors, and showed her their official identification. Lund asked if Quiroz was home. At some point Quiroz appeared and invited the inspectors to come in. Lund intended to try to set up an appointment to speak with Quiroz at his office, but Quiroz "decided that she'd like to be interviewed at her home." According to Lund, "[Quiroz] said why don't we just discuss or do the interview right here in my home,

and I didn't object, and she welcomed us into her house. And then for privacy [she] said, 'Let's go discuss this in my bedroom.'"

Once in Quiroz's bedroom, Quiroz and Flores sat on the bed, and Lund sat on a small chair. Lund explained to Quiroz that he wanted to speak with her about "fraudulent activity in her Washington Mutual bank account." He testified, "I explained that we were just [t]here to interview her because obviously there's some fraudulent activity through her account, and . . . that's all it was, that we were just here and that's our capacity, was just to interview her and get her statement as to what happened because there were fraudulent checks deposited into her account, and then we were going to leave." Lund proceeded to ask Quiroz questions about her account, and she willingly talked with him about the account.

Quiroz initially told the inspectors that she had lost her wallet and that she had no knowledge of what had occurred with regard to her account. After Quiroz answered the inspectors' initial questions, Lund began a discussion with Quiroz that lasted approximately 20 minutes. Lund explained to Quiroz that the fraudulent checks that had been deposited into her account were relevant to an investigation Lund was conducting. He told Quiroz that he had spoken with other individuals about similar fraud in their accounts and that those individuals had explained that they had "provided certain information" that allowed the fraud to occur.

At some point during Lund's explanation of the status of his investigation, Quiroz told him that she did have knowledge about what had occurred with her bank account.

Quiroz eventually told the inspectors that Franco had approached her and asked to use her bank account and identifying information.

Lund never told Quiroz that she was not free to leave the room or the house, and never indicated to her that he would not leave.

Quiroz's mother, Maria Acevedo, testified that "officials" had come to her home in October 2003, and asked to speak with Quiroz. Acevedo told Quiroz that someone wanted to see her, and Quiroz went to the door. According to Acevedo, Quiroz invited the postal inspectors inside their home and the three went into Quiroz's bedroom. Acevedo noticed that the door to the bedroom was closed, but she did not see who closed it. The interview lasted for approximately an hour or less.

The trial court concluded that Quiroz was not in custody during the interview, and thus, that the inspectors had no duty to advise Quiroz of her *Miranda* rights prior to talking with her. The court stated,

"Even if you were the focus of the investigation on [*sic*] any real degree, it is the objective circumstances that control in these determinations, what was actually going on, visible to you. The subjective intent, what the officers or agents may have been thinking is not actually the issue. All right. [¶] So as it unfolds, the manner in which they presented themselves to you and your responses as described by the witnesses leads this Court to believe that the statements were voluntary because; one, you weren't in custody, and I think it's reasonable that based on the circumstances, that any reasonable person under a similar set of circumstances as unfolding [*sic*] on that date would have felt that they were free to terminate the interview at some point in time, if that was an option. They had the liberty, or the right to terminate existed. I don't find that there was any coercion. [¶] So having stated that, I do not find a violation of *Miranda*. The statements were voluntary, so that statement would be admissible – the first interview would be admissible."

2. *The postal inspectors were not required to give Quiroz Miranda warnings before talking with her because she was not "in custody"*

"An officer's obligation to administer *Miranda* warnings attaches . . . 'only where there has been such a restriction on a person's freedom as to render him "in custody.'" [Citation.]" (*Stansbury v. California* (1994) 511 U.S. 318, 322.) "In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but 'the ultimate inquiry is simply whether there [was] a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.' [Citations.]" (*Ibid.*)

"The question whether defendant was in custody for *Miranda* purposes is a mixed question of law and fact. [Citation.] 'Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" (*People v. Ochoa* (1998) 19 Cal.4th 353, 401-402.) "'Once the scene is . . . reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." [Citations.]" (*Id.* at p. 402.)

The first inquiry is factual, while the second inquiry requires a court to apply the legal standard to the historical facts. (*People v. Ochoa, supra*, 19 Cal.4th at p. 402.) We therefore "apply a deferential substantial evidence standard [citation] to the trial court's conclusions regarding "'basic, primary, or historical facts: facts 'in the sense of recital of external events and the credibility of their narrators'" [Citation.]" (*Ibid.*) The

ultimate determination as to custody "presents a "mixed question of law and fact.""

(*Ibid.*) Thus, "we independently decide whether 'a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.' [Citation.]" (*Ibid.*)

Quiroz does not directly challenge any of the trial court's factual determinations. Rather, she refers to the relevant testimony and suggests that the trial court should have concluded that she was in custody for purposes of *Miranda*, based on the testimony of Lund and Quiroz's mother. Therefore, we independently consider whether a reasonable person in Quiroz's position would have felt free to end the questioning that day.

"[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." (*Stansbury, supra*, 511 U.S. at p. 323.) "Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal arrest? [Citations.] . . . Although no one factor is controlling, the following circumstances should be considered: '(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of questioning.' [Citation.]" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403.)

Quiroz contends that although the location of the questioning — her bedroom — was a less coercive environment than a police station, this court should nevertheless infer that she reasonably believed she could not tell the officers to leave based on the fact that she was only 18 years old, that she was approached at her home by two individuals she

refers to as "officers," that the inspectors stayed for an hour, and that she was, as she describes on appeal, "locked in a small bedroom with two officers questioning her involvement in possible criminal activity".

"[A] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.' Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" (*Oregon v. Mathiason* (1977) 429 U.S. 492, 495.)

For a number of reasons we conclude that a reasonable person in Quiroz's position would have believed she could end the questioning and ask the inspectors to leave. (*People v. Ochoa, supra*, 19 Cal.4th at pp. 401-402.) Quiroz agreed to speak with the inspectors that day in her home, despite the fact that the inspectors intended only to set up an interview at a later time. It was at Quiroz's behest that the three discussed the matter in Quiroz's bedroom.⁵ Lund informed Quiroz that he and Flores wanted to get a statement from her about fraudulent activity related to her bank account, and that the inspectors then would leave. The inspectors did not suggest, however, that they were not

⁵ Officer Lund testified to this effect, and Quiroz confirmed that she had asked the inspectors into her bedroom: "[T]hey asked me if they can talk to me and ask me some questions, and I said okay. So I brought them into my bedroom"

going to leave unless Quiroz agreed to speak with them first, or that they would not leave once they finished talking with her. Nothing the inspectors did would have justified an objectively reasonable belief that Quiroz was not free to terminate the interview.

Quiroz contends that her situation is similar to the situation presented in *U.S. v. Kim* (9th Cir. 2002) 292 F.3d 969 (*Kim*). Even if *Kim* were binding on this court (*People v. Avena* (1996) 13 Cal.4th 394, 431 ["we are not bound by decisions of the lower federal courts, even on federal questions"]), the factual scenario in *Kim* is so different from the situation here that *Kim* serves only to further establish that Quiroz was not in custody for purposes of *Miranda* during this interview.

Kim and her husband owned a store that was under investigation for selling large doses of pseudoephedrine. (*Kim, supra*, 292 F.3d at p. 971.) Eight months after investigators first spoke with Kim about the connection between sales of large quantities of pseudoephedrine and methamphetamine production, an undercover investigator purchased a large quantity of pseudoephedrine from Kim's store. (*Ibid.*) Officers subsequently executed a search warrant at the store. (*Ibid.*) Kim's son was running the store at the time. Officers handcuffed him, searched the store, and began asking him questions. Officers removed his handcuffs, but continued to question him. (*Ibid.*)

After an officer arrived at Kim's home looking for another individual, Kim called the store and became alarmed when her son did not answer. Kim and her husband then went to the store to check on their son. (*Kim, supra*, 292 F.3d at p. 971.) They arrived to find a number of police cars in the parking lot. The door to the store was locked. Kim knocked on the door until a police officer let her in. The officer prevented Kim's husband

from entering the store, and locked him out. (*Ibid.*) Once Kim was inside the store, she asked her son, in Korean, if he was all right. One officer ordered Kim to speak in English and another told her to "shut up." (*Ibid.*) Officers eventually ordered Kim to sit down, away from her son, and started to question her. (*Id.* at pp. 971-972.)

In concluding that a reasonable person in Kim's situation would have believed she was not free to leave, the *Kim* court noted that although the questioning took place in Kim's own store, officers had not summoned Kim to the store. While this fact would suggest that the situation was not coercive, the *Kim* court concluded that other factors compelled a different conclusion. Specifically, the court was concerned that Kim was unprepared to face police questioning when she arrived at the store because officers had not summoned Kim to the store, and she did not go there with the intention of presenting herself for a police interview. (*Kim, supra*, 292 F.3d at p. 974.) Rather, she arrived at the store and asked to be allowed to go in, despite the police presence, because she was worried that something had happened to her son. (*Ibid.*) Kim had no idea what she was walking into when she entered her store that morning. Here, in contrast, Quiroz knew that the inspectors wanted to interview her *before* she invited them into her home and agreed to talk with them. Quiroz was also the one who suggested that they talk in her bedroom, presumably so that her mother would not be privy to the conversation.

In *Kim*, the officers "temporarily took over complete control of Kim's store, creating 'a police-dominated atmosphere,' in which the police kept Kim physically isolated from two family members who could have provided both moral support and, given her limited English, a more complete understanding of the overall situation." (*Kim*,

supra, 292 F.3d at p. 977.) In stark contrast, the interview at issue here was conducted by two postal inspectors who were invited into the defendant's home by the defendant herself. The inspectors in this case were dressed in casual clothing and did not display firearms, further reducing any potentially "coercive" aspect of the interview. Quiroz testified that the inspectors "were both professional and courteous with [her] when they spoke with [her]." Lund testified that Quiroz appeared "relaxed," and that she expressed a willingness to talk with the inspectors. Lund asked relatively few questions of Quiroz before she acknowledged her participation in the criminal conspiracy, and Quiroz does not suggest that the questions were coercive. In addition, the interview was not unreasonably long. (See *People v. Storm* (2002) 28 Cal.4th 1007, 1036 [interview at defendant's home that "lasted slightly over one hour" was not coercive].) Unlike in *Kim*, the record in this case does not suggest that there was a "police-dominated atmosphere" in Quiroz's home that day. (*Kim, supra*, 292 F.3d at p. 977.)

There is nothing about the situation in this case that suggests that the inspectors behaved in an intimidating or threatening manner toward Quiroz. Under these circumstances, a reasonable person would have felt at liberty to end the conversation. *Miranda* warnings were thus not required.

C. *Quiroz has forfeited her claim that her admissions were induced by promises of leniency and were thus involuntary*

Quiroz contends that the trial court erred by allowing in evidence the admissions she made to the postal inspectors because, she asserts, those admissions were induced by the inspectors' promises that she would not be prosecuted if she told them the truth.

Involuntary statements may not be used against the accused in a criminal proceeding. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 225.) However, Quiroz did not claim, either in her motion to suppress or at trial, that her statements were involuntary on the ground that the inspectors induced a confession by promising Quiroz that she could avoid prosecution if she told them the truth. Because Quiroz failed to raise this ground for exclusion in the trial court, "the parties had no incentive to fully litigate this theory below, and the trial court had no opportunity to resolve material factual disputes and make necessary factual findings." (*People v. Ray* (1996) 13 Cal.4th 313, 339.) "Under such circumstances, a claim of involuntariness generally will not be addressed for the first time on appeal." (*Ibid.*; see also *People v. Mayfield* (1993) 5 Cal.4th 142, 172.)

D. *The prosecutor's improper questions constitute error, but do not require reversal*

Quiroz argues that the prosecutor's improper questions regarding whether she believed the postal inspectors were lying when they testified compounded the prejudice caused by the admission in evidence of her statements to postal inspectors. Specifically, Quiroz contends that the prosecutor engaged in misconduct when the prosecutor asked Quiroz a series of questions that effectively "forced" her to testify that the postal inspectors had lied on the stand. We conclude that the prosecutor committed misconduct in asking Quiroz whether the inspectors had lied during their testimony, but that the misconduct did not prejudice Quiroz.

1. *Additional background*

Lund testified that neither he nor Flores promised Quiroz that she would not be prosecuted if she told them the truth. He also testified that Quiroz did not tell the inspectors that she was afraid of Guzman or Franco, and that she did not appear to be fearful when he spoke with her. Another postal inspector, Robert Diaz, testified that during an interview with Quiroz on October 30, 2003, she did not appear to be fearful and did not express any fear about identifying Franco from a photograph.

On direct examination, Quiroz testified that during her first interview with Lund and Flores, Lund told her about fraudulent activity he was investigating that was similar to what had occurred with her account. Quiroz testified that Lund told her "that these people were all going to be prosecuted if we didn't tell them the truth, and if we told them the truth, that we would be okay." Quiroz testified that she then admitted to the inspectors that she had been involved, and explained to them that she had initially lied because she was afraid of Franco and Guzman. She said that she refused to comply with the inspectors' request that she allow them to tap into her telephone conversations with Franco and Guzman because of her fear of Franco.

On cross-examination, the prosecutor asked Quiroz about the promise of leniency that she claimed the inspectors had made to her. The prosecutor asked Quiroz if she disagreed with any of the statements Lund had made during his trial testimony. Defense counsel objected on the grounds that the question involved an improper request for the witness to comment on the testimony of another witness, and that the question was compound and vague. The court overruled the objection, commenting that the question

had been phrased properly. However, the court asked the prosecutor to narrow the question.

The prosecutor then asked Quiroz specific questions about portions of Lund's testimony. The prosecutor asked Quiroz whether Lund's statement that no one had made promises to her about not being prosecuted was true. Quiroz responded, "He didn't promise me, but he told me." A short time later, the following colloquy occurred between Quiroz and the prosecutor:

- "Q. So, I'm not clear. Did he tell you that you would not be prosecuted if you told the truth?"
- "A. "That's what he told me, yes.
- "Q. Okay. So when he said that on the stand, when he said that he told you – didn't say anything of that nature when I asked him, then he was lying?"
- "A. I believe he was.
- "Q. Okay. So Inspector Lund did tell you, and Inspector Flores was present when he said this, that if you told the truth, you wouldn't be prosecuted?"
- "A. He said I would be okay, yes.
- "Q. No, let me make that real clear. [¶] Did he tell you 'Tell the truth, it's okay, or did he tell you 'Tell the truth, you won't be prosecuted?"
- "A. He told me, 'Tell the truth, you won't be prosecuted and you'll be okay. And we'll leave you alone.'"

The prosecutor asked Quiroz why she had not told Lund or Flores that she was afraid of Franco and Guzman. Quiroz responded that she *had* told the inspectors about her fear. The prosecutor and Quiroz then engaged in the following colloquy:

"Q. When I asked Inspector Lund if you ever said anything to him about being afraid of Gilbert or Juan and he said no, was he lying?

"A. Yes, he was.

"Q. When I asked Inspector Flores if you ever said anything about being afraid of Juan or Gilbert and she said no, was she lying?

"A. Yes, she was.

"Q. When I asked Inspector Diaz if you ever brought to his attention that you were afraid or fearful of Juan or Gilbert and he said no, was he lying?

"A. Yes.

"Q. And when I asked Inspector Neve if you ever brought to his attention that you were afraid or fearful of Juan or Gilbert and he said no, would he be lying?

A. I don't remember talking to him about that.

Q. So then on October 16th and October 30th, it's your testimony that you did bring to the attention of those investigators your fear of Juan and Franco?

A. Yes."

The next day, defense counsel moved for a mistrial on the ground that these questions were improper. Quiroz's attorney argued,

"And this is relating to a series of questions, some of which were objected to, but it was real clear that at a certain point the Court was not sustaining my objections, it was overruling them, so I quit objecting, but basically it's all of the questions were [*sic*] asked when my client was on cross-examination basically forcing the defendant to in essence call the officer a liar who interrogated her on certain issues and points where there was some discrepancies in the testimony, and so forth. [¶] . . . [¶] And basically I think that whole line of general nature of cross-examination has been held to be

improper, and I think it was so pervasive, and in addition, the Court overruling the objection sort of basically told the jury thereby that that's okay to do that, I think that that really is – was extremely prejudicial."

Defense counsel asked the court, in the alternative, "to fashion an extremely strong admonition to the jury explaining that that testimony and certain portions have been stricken, and they're not to consider that"

Prior to closing arguments, the trial court admonished the jury as follows: "Ladies and gentlemen, the Court has stricken the following evidence from the record:" The court then read to the jury the prosecutor's questions about whether the inspectors had been lying and Quiroz's responses to those questions. The court went on to state,

"Ladies and gentlemen, those questions and those answers are stricken from the record. You are to treat those questions and those answers as though they were never presented to you in evidence. You are to remove them from your notes, and as best as possible from your memory. You are not to let those questions and those answers in any way enter into your deliberations or become a part of your deliberations as evidence in this case. [¶] The bell has been unring, as they say. You are to disregard those references to the answers [*sic*] lying, as represented in those questions and answers."

2. *The prosecutorial misconduct at issue was harmless*

a. *The prosecutor's questions were improper*

Courts are in disagreement as to whether questions in the form "were they lying" are improper. (*People v. Zambrano* (2004) 124 Cal.App.4th 228, 238-239.) Some courts have concluded that this type of question is always improper, while others have concluded that use of "were they lying" questions is never improper. (*Ibid.*) A third line of cases concludes that "were they lying" questions "'may be appropriate when the only

possible explanation for the defendant's inconsistent testimony is that either the defendant or the other witness is lying [citations], or when the defendant has opened the door during direct examination by testifying about the veracity of other witnesses [citations], or when the "were they lying" questions "have a probative value in clarifying a particular line of testimony" [citations].' [Citation.]" (*Id.* at p. 239.)

The People argue that the prosecutor's questions were proper because they were "necessary to clarify the 'defendant's own position' on whether her testimony differed from that of the inspectors" because either she had a better vantage point, had a better memory of the event, or, alternatively, because the other witnesses were lying. However, the prosecutor's questions did not elicit new information about Quiroz's credibility or the credibility of the postal inspectors. Rather, the questions served only to force Quiroz to state her opinion, repeatedly, that the inspectors had lied on the witness stand. This was unnecessary, since it was clear that Quiroz's testimony directly conflicted with the testimony of the inspectors. The jurors could reach their own conclusion as to why the conflict existed. There was no sound reason for asking Quiroz to opine on the veracity of the inspectors' testimony.

b. *The prosecutor's improper questions do not require reversal*

Although it was improper for the prosecutor to ask Quiroz whether the inspectors had lied during their trial testimony, there is no reasonable probability that but for this error, the jury would have reached a decision more favorable to Quiroz.

"The applicable federal and state standards regarding prosecutorial misconduct are well established. "[A] prosecutor's . . . intemperate behavior violates the federal

Constitution when it comprises a pattern of conduct "so egregious that it infects the trial with such unfairness as to make the conviction a denial of due process." [Citations.] Conduct by a prosecutor that does not render a criminal trial fundamentally unfair is prosecutorial misconduct under state law only if it involves "the use of deceptive or reprehensible methods to attempt to persuade either the court or the jury." [Citations.] [Citations.]" (*People v. Hill* (1998) 17 Cal.4th 800, 819.) "A defendant's conviction will not be reversed for prosecutorial misconduct . . . unless it is reasonably probable that a result more favorable to the defendant would have been reached without the misconduct.' [Citation.]" (*People v. Harrison* (2005) 35 Cal.4th 208, 244.)

The California Supreme Court "has recognized that asking clearly improper questions constitutes misconduct." (*People v. Zambrano, supra*, 124 Cal.App.4th at p. 242.) We have determined that the prosecutor's "were they lying" questions to Quiroz were improper. However, it is not reasonably probable that the jury would have reached a result more favorable to defendant if these questions had not been asked.

It was clear that Quiroz's testimony directly conflicted with the testimony of the postal inspectors. Asking Quiroz whether the inspectors had lied only slightly highlighted an inference that the jury could easily have drawn on its own. Because the jury had heard the conflicting testimony, the information the prosecutor elicited from Quiroz was simply not very significant. In addition, the trial court instructed the jury to disregard the improper line of questioning. We must presume that the jury complied with the court's instruction. (See *People v. Sapp* (2003) 31 Cal.4th 240, 305.) For these reasons, we cannot conclude that there is a reasonable probability that the result would

have been more favorable to Quiroz if the prosecutor had not asked Quiroz the improper questions.

E. *The evidence was sufficient to support Quiroz's conviction for conspiracy to defraud another of property*

Quiroz asserts that there was insufficient evidence to support her conviction for conspiracy to defraud another of property. Quiroz contends that because she testified at trial that she believed her bank account information would be used to hide or launder drug money, there was insufficient evidence to establish that she knew her codefendants intended to steal and forge checks when she provided them with her bank account and personal information. Quiroz essentially argues that she agreed only to allow her bank account to be used to "launder" or hide drug money, and that she did not agree that stolen and forged checks could be passed through her account.

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" (*People v. Ochoa*, *supra*, 6 Cal.4th 1199, 1206.) "Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.]" (*Ibid.*)

"To sustain a conspiracy conviction, there must be proof of specific intent to commit the offense which is the subject of the conspiracy. [Citations.]" (*People v. Jones* (1986) 180 Cal.App.3d 509, 517.) However, "[t]he existence of the conspiracy 'may be shown by direct or circumstantial evidence that the parties positively or tacitly came to a mutual understanding so as to accomplish the act and unlawful design.' [Citation.]" (*Ibid.*) "Thus, "[direct] proof of a formal understanding between parties to the conspiracy is not required as the basis of an indictment or information." (*Ibid.*) The People need not ""prove that the parties actually came together, mutually discussed their common design and after reaching a formal agreement, set out upon their previously agreed course of conduct. The extent of the assent of minds which are involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the jury from the proofs of the facts and circumstances which, when taken together, apparently indicate that they are parts of the same complete whole." [Citation.]" (*Ibid.*)

Further, "[i]t has been held that the overall scheme need not be complete in all its aspects at the time it is formed. [Citation.] "A conspiracy is not necessarily a single event which unalterably takes place at a particular point in time when the participants reach a formal agreement; it may be flexible, occurring over a period of time and changing in response to changed circumstances.' [Citation.]" (*People v. Vargas* (2001) 91 Cal.App.4th 506, 553.)

Quiroz asserts that "no evidence was presented that she was aware of the conspiracy as it was ultimately carried out by other codefendants." Quiroz is correct that there was no *direct* evidence of her knowledge of the nature of the conspiracy. However,

she fails to acknowledge the existence of circumstantial evidence from which the jury could reasonably have inferred that Quiroz knew that her codefendants intended to defraud someone, and that she agreed to sell her account information to her codefendants in furtherance of that scheme.

In challenging the sufficiency of the evidence, Quiroz relies heavily on her own testimony at trial to the effect that she believed her bank account information would be used to hide or launder drug money, not to pass forged checks. However, the jury was free to reject Quiroz's self-serving testimony. Quiroz's credibility was called into question by her account of what the inspectors had promised her. The jury had the opportunity to listen to Quiroz's testimony and to observe her demeanor on the stand. It appears that after hearing from Quiroz, the jury concluded that she was not telling the truth about what she knew or did not know concerning the scheme to defraud the bank. (See Evid. Code, § 780, subs. (a) & (f) [in assessing witness credibility the fact finder may consider, among other things, the witness's "demeanor while testifying and the manner in which he testifies" and the "existence or nonexistence of a bias, interest, or other motive"].)

The jury could have rejected Quiroz's testimony that she did not know about the forgery plan on the basis that the circumstantial evidence did not support Quiroz's claims. For example, Quiroz admitted that she first learned that she could make money from selling her personal information to Franco from her friend Erica, Franco's girlfriend. Although Quiroz testified that Erica did not provide Quiroz with details about the plan, the jury could have inferred from Quiroz's identification of Erica as her "best friend at the

time" that it was unlikely that Erica provided Quiroz with *no* information about the scheme.

In addition, there was evidence that Quiroz did not know Guzman very well, and that she met with him only once — when he gave her money and promised to pay her more later. The jury could have determined that it was unreasonable to believe that Quiroz would have allowed her account information to be used by someone she barely knew without asking what the person was going to do with her account.

Quiroz does not contest that she did, in fact, give her personal information, including an identification card, to Franco, and that she later received \$1,000 from Guzman and a promise that she would receive more money at a later date. The jury could have inferred from the substantial amount of money Quiroz was to be paid that Quiroz knew the nature of the plan. Further, the fact that the payments would not be made to her immediately upon providing her account information suggests that Quiroz knew she would not be paid until her codefendants were able to obtain money by carrying out the forged check fraud. In fact, Quiroz told Lund that "Juan Guzman paid her off, or gave her \$1,000 in \$100 bills. He also promised her that they were going to get more money *out of the bank account* at a later date, and that he'd also pay her additional funds similar to the amount that she received that night." (Italics added.) The fact that Quiroz was aware that Guzman planned to "get more money out of the bank account" and then pay her is circumstantial evidence that she understood how the plan was to work.

The fact that Quiroz was told not to use her account at all until Franco and Guzman were through is also consistent with a check fraud scheme, since Quiroz's refraining from using the account would ensure that the fraudulent checks could be passed through without complications, and would facilitate perpetuation of the scheme by giving her and other implicated account holders a viable explanation, i.e., that their information had been lost or stolen, once the bank discovered fraud.⁶

Quiroz initially lied to the inspectors, making up a story about having lost her wallet. It was not until Lund described to her his investigation and the fact that other individuals had confessed to their participation in the scheme that Quiroz finally admitted she had sold her information to Guzman and Franco. Quiroz did not mention anything at that time about believing that her account was going to be used to launder drug money, rather than to defraud someone. She did not mention drugs or money laundering during a second interview with Lund and Diaz, either. This suggests that Quiroz was aware of the nature of the scheme while she was participating in it, and that she came up with the story about assuming her account would be used to launder drug money only after these initial

⁶ Lund testified in response to a question as to whether Quiroz had told him that the first time she learned that checks were involved in the scheme was when she received the insufficient fund checks from her bank, "I think it was implied when she said that [*sic*] not to contact the bank, that she knew" At that point he was cut off by another question from Quiroz's attorney.

interviews.⁷ Lund's description of what Quiroz told the inspectors during the first interview also suggests that the inspectors and Quiroz were all talking about the fraudulent check scheme during that first interview:

"She said she had a friend who told her about this, referred to as a scam,^[8] where she can make quick money, large amounts of money, anything – I'm not positive exactly how much, but at least a thousand or more – and all she had to do was supply her personal information, basically allow someone to use her bank account, because this crime cannot happen unless there is someone willing to provide their [*sic*] bank account and their [*sic*] information and their [*sic*] silence when these transactions are occurring over a week or two-week time period."

The jury could have inferred from this evidence that it would be unreasonable to conclude that Quiroz did not know her account was going to be used in a check fraud scheme.

The jury may also have inferred from the nature, breadth, and sophistication of the scheme that the participants had to know what was going on in order to ensure that the scheme could be carried out. Lund explained that in contrast to typical check stealing crimes he had previously encountered as a postal inspector, crimes like the one involving Quiroz's account showed a unique pattern. In these cases, "the check was actually

⁷ Quiroz did tell the inspectors that she knew Franco "because they were both tweakers," thereby tangentially mentioning drugs. However, the fact that Quiroz raised the issue of using drugs in relation to Franco but did not mention anything about him selling or distributing drugs also suggests that she may have created her story about drug money laundering only after she was facing prosecution.

⁸ When asked whether Quiroz used the word "scam" in particular, Lund testified that he did not remember.

deposited in a legitimate account and withdrawals are made from this account." Lund explained why this particular fraud was successful:

"When you deposit a check into the bank they put a hold on it for a day or two. If they waited for the check to clear, because there's so many small banks out there, it would shut commerce down because they would have to wait two, three weeks, and what if the, for example, what if the bank's in Florida? So for you to get your funds, you would have to wait a while for the check to be cleared. [¶] So there's a hold that was put on these checks, therefore there was a shorter time frame where the check was deposited, two days would go by, and then the large withdrawals would be made. [¶] Well, . . . no one is going to be alerted to this fraud until the first check comes back as insufficient funds, which may take a week or two. So in that time, once that check is cleared, which again is a one or two-day hold, you can withdraw those six, seven, \$8,000, and those are just examples, and then deposit another check."

Lund estimated that he had seen at least 70 cases that matched this pattern. The evidence demonstrated that Quiroz had contact with multiple perpetrators of the complex scheme. She admitted to one postal inspector that she assumed the checks that were deposited into her account were from an illegal source. Quiroz even testified that she believed the checks were forged. Moreover, the checks were made out for large, even sums of money from people Quiroz did not know. The jury could have inferred that Quiroz knew that fraudulent checks were going to be, and were, passed through her account, and that she would be able to share in the proceeds obtained from the use of her account for this purpose.

Although no single fact or inference would be sufficient on its own to support the verdict, when considered in sum, the circumstantial evidence supports the jury's verdict.

There was sufficient circumstantial evidence to support the conclusion that Quiroz agreed to take part in the forgery scheme, as charged.

IV.

DISPOSITION

The judgment of the trial court is affirmed.

CERTIFIED FOR PARTIAL PUBLICATION

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.