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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO CORADO,

Defendant and Appellant.

A133791

**(Sonoma County
Super. Ct. No. SCR558776)**

Defendant Alejandro Corado (appellant) pled no contest to committing rape in concert with others (Pen. Code, § 264.1)¹ with an infliction of great bodily injury enhancement (§ 12022.8) and was sentenced to 12 years in prison. Appellant’s only contention on appeal is that the trial court erred in awarding restitution to the victim’s guardian for wages lost due to attendance of court proceedings. We affirm.

BACKGROUND

On April 6, 2009, the 15-year-old victim was walking home at night when appellant and three other men passed by in a car. The men forced the victim into the car and took her to an isolated location, where they raped and physically assaulted her. The victim became pregnant and had an abortion; DNA tests revealed that appellant was the biological father.

¹ All undesignated section references are to the Penal Code.

Appellant pled no contest to committing rape in concert with others (§ 264.1) with an infliction of great bodily injury enhancement (§ 12022.8). In November 2011, the trial court sentenced appellant to the agreed-upon term of 12 years.

In January 2012, the trial court ordered restitution to the victim's guardian, her grandmother, in the amount of \$3,922.20 for lost wages due to attendance of court proceedings.

DISCUSSION

Appellant contends the trial court's award of restitution to the victim's guardian was unauthorized and excessive.

I. *Factual Background*

The victim's guardian sought restitution for lost wages at the rate of \$21.79 an hour due to attendance of 42 court appearances. The trial court stated it was reasonable the guardian would miss several hours of work for even a brief conference, reasoning "I can understand her being here at 8:00, going through security, being in court at 8:30 and waiting for the court to call the case. So even though [the hearing] took 15 minutes, it might have taken several hours." As an offer of proof, the prosecutor explained that the guardian works in San Rafael; her regular starting time is either 7:00 a.m. or 8:00 a.m.; and, following the hearings, she would normally arrive at work at 11:30 a.m. The court stated its intent was to award restitution for four hours for each court appearance at the rate of \$21.79 per hour.

The trial court's written tentative ruling relied on *People v. Moore* (2009) 177 Cal.App.4th 1229 (*Moore*) and *People v. Crisler* (2008) 165 Cal.App.4th 1503 (*Crisler*) in concluding the victim's guardian was entitled to restitution for lost wages while attending court proceedings. The court found the guardian was entitled to restitution for 42 court appearances and awarded restitution for four hours of lost wages for each appearance, for a total of \$3,660.72. The court also added restitution for 12 hours of lost wages for attendance of the preliminary hearing in the amount of \$261.48. The parties submitted the matter on the trial court's tentative ruling, and the court adopted its

tentative ruling as the order of restitution, ordering that restitution in the amount of \$3,922.20 be paid to the victim's guardian.

II. *The Restitution Award Was Proper*

Appellant contends the trial court's award was unauthorized under the statute authorizing restitution awards. We disagree.

“Article I, section 28 of the California Constitution provides, in relevant part: ‘It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. [¶] Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.’ [Citations.]

“The constitutional mandate for restitution is implemented through section 1202.4. Subdivision (a)(1) of section 1202.4 provides: ‘It is the intent of the Legislature that a victim of crime who incurs *any economic loss* as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.’ . . . Subdivision (f) of section 1202.4 provides, in relevant part: ‘[I]n *every case* in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. . . . *The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.* . . . [¶] . . . [¶] (3) To the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to *fully reimburse* the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, *including, but not limited to*’ 11 enumerated categories of expenses. . . .” (*Crisler, supra*, 165 Cal.App.4th at p. 1507.) Appellant does not dispute that the victim's guardian, her grandmother, qualifies as a “victim” due restitution under section 1202.4. (See *Crisler*, at pp. 1507-1508.)

One of the enumerated categories of expenses includes a minor victim's guardian's wage losses "due to time spent as a witness or in assisting the police or prosecution." (§ 1202.4, subd. (f)(3)(E).) Appellant argues that, because the statute specifically authorizes restitution for wage losses only for time spent as a witness or assisting the police or prosecution, restitution for any other wage loss is unauthorized. However, appellant fails to cite any authority for the proposition that section 1202.4, subdivision (f)(3)(E) should be read as a limitation on the scope of permissible awards for wage loss. That interpretation of the statute would be contrary to the plain language in section 1202.4, subdivision (f) specifying that a trial court's power to provide restitution is *not* limited to the enumerated categories of expenses. Moreover, appellant's contention is contrary to the principle that the restitution statute is to be interpreted broadly. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046 (*Keichler*).

Crisler, supra, 165 Cal.App.4th 1503, rejected the same argument made by appellant in the present case. There, the court held that the parents of a murder victim were entitled to be reimbursed for their time away from work while they attended the trial of the man who killed their son, even though the parents did not testify or otherwise assist the prosecution. (*Id.* at p. 1508.) The court recognized that such a restitution award was beyond the scope of section 1202.4, subdivision (f)(3)(E), but *Crisler* relied on the following proposition in *Keichler, supra*, 129 Cal.App.4th at page 1046: "In examining the restitution statute, '[t]he intent of the voters is plain: every victim who suffers a loss shall have the right to restitution from those convicted of the crime giving rise to that loss.' [Citation.] As a result, 'the word "loss" must be construed broadly and liberally to uphold the voters' intent.' [Citation.] Because the statute uses the language 'including, but not limited to' these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant's criminal behavior, even if not specifically enumerated in the statute. [Citation.]" (See *Crisler*, at pp. 1508-1509; see also *People v. Giordano* (2007) 42 Cal.4th 644, 656 (*Giordano*)). "The only limitation the Legislature placed on victim restitution is that the loss must be

an ‘economic loss incurred as the result of the defendant’s criminal conduct.’ [Citations.]” (*Crisler*, at p. 1508; see also *Giordano*, at p. 656.)

Crisler concluded, “the express mention of one category of loss (lost wages due to time spent as a witness or in assisting law enforcement) does not preclude reimbursement for other economic losses. Trial-related expenses need not fall within any of the enumerated categories to qualify for reimbursement. [Citations.] ¶ Here, the parents took time away from work and incurred parking and mileage expenses as a result of attending the murder trial of the man who killed their son. These expenses readily qualify as ‘economic loss incurred as the result of the defendant’s criminal conduct’ since they would not have been incurred had [the] defendant not murdered their son. [Citation.] It is entirely reasonable that the parents of a murder victim will attend the murder trial in an attempt to gain some measure of closure and a sense that justice has been done. This is not the sort of situation where an award of expenses will ‘impermissibly “allow [the] victim to be opportunistic.” [Citation.]’ [Citation.]” (*Crisler*, *supra*, 165 Cal.App.4th at p. 1509; see also *Moore*, *supra*, 177 Cal.App.4th at pp. 1231-1233 [following *Crisler* in upholding award of restitution to family member for attendance at pretrial and trial proceedings].) As *Moore* reasoned, “That the victim’s attendance was not mandated by statute, that he was not required to address the court at those hearings, and that he chose to attend the proceedings of his own volition, do not relieve [the] defendant from the responsibility to compensate him for the loss attributable to [the] defendant’s criminal conduct.” (*Moore*, at p. 1233.)

The same reasoning applies in the present case. Appellant contends *Crisler* and *Moore* are distinguishable because those cases involved reimbursement for “critical” trial proceedings, and in this case the victim’s guardian was reimbursed for wages lost due to her attendance at routine status conferences. However, that is not a distinction relevant to appellant’s statutory interpretation argument because, even assuming appellant’s

characterization of the facts in *Crisler* and *Moore* is accurate,² those cases still stand for the proposition that section 1202.4, subdivision (f)(3)(E) does not limit the scope of the trial court's authority to award restitution for lost wages. We follow *Crisler* and *Moore* and conclude the trial court's restitution award was not unauthorized.

The only potentially viable argument left to appellant is that the trial court abused its discretion (*Keichler, supra*, 129 Cal.App.4th at p. 1045) in fashioning its restitution award. Where there is a factual and rational basis for the trial court's award, we will not find an abuse of discretion. (*Ibid.*) To the extent appellant argues the trial court abused its discretion in awarding the victim's guardian restitution for wages lost due to her attending noncritical proceedings, we disagree. The court could rationally conclude the guardian reasonably sought to protect the victim's interests by monitoring the entirety of the criminal case. We also reject any argument the trial court abused its discretion in calculating the amount of the restitution award. The award was a reasonable estimate based on the information provided to the court, and appellant did not below request any additional documentation regarding the guardian's losses or make any attempt to show the losses were less than calculated by the trial court in its tentative ruling. (See *People v. Prosser* (2007) 157 Cal.App.4th 682, 691 ["Once the victim has made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]".]) The cases cited by appellant on this issue are inapposite. In those cases the trial courts included amounts in their restitution awards that were not reasonable estimates of the victims' actual losses due to the defendants' criminal conduct.

² In fact, the present case is *not* distinguishable from *Moore*, because the victim in that case received restitution for wages lost due to his attendance of various pretrial proceedings. (*Moore, supra*, 177 Cal.App.4th at p. 1233.)

DISPOSITION

The judgment is affirmed.

SIMONS, J.

We concur.

JONES, P.J.

NEEDHAM, J.