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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL AMOS RUCKER,

Defendant and Appellant.

A141806

(Solano County
Super. Ct. No. FCR289420)

Defendant Paul Amos Rucker pleaded no contest to one count of assault by means likely to produce great bodily injury after seriously injuring another man during an argument. Defendant contends the trial court abused its discretion by imposing an inappropriately large restitution amount as a condition of his probation. We affirm.

I.

BACKGROUND

Defendant was charged in an information, filed May 8, 2012, with one count of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and one count of battery with serious bodily injury (Pen. Code, § 243, subd. (d)), with allegations of personal infliction of great bodily injury and two prior prison terms (Pen. Code, §§ 667.5, subd. (b), 12022.7, subd. (a)).

Defendant, after an argument over a parking space, struck the victim's head repeatedly. Police on scene noted the victim's eyes were swollen shut, and he complained of jaw pain. He was found to have suffered a broken nose with permanent cartilage separation, as well as the loss of two teeth.

Defendant pleaded no contest to assault by means likely to produce great bodily injury, admitted to one prison prior, and the remaining charge and enhancements were dismissed. The trial court placed defendant on formal probation for three years with a one-year county jail commitment.

The trial court held a hearing on victim restitution. The assault resulted in a medical bill of \$36,245.26 for the victim, and he had no insurance coverage. The bill stated that, as a result of the denial of coverage, the victim “may be eligible for a discount based on our policy.” At the hearing, defendant’s counsel requested a 90-day continuance in order to subpoena the hospital’s billing records to determine whether the victim received a discount. At the subsequent hearing, defendant presented no evidence pertaining to a discount to the court. The court entered restitution in the amount of \$36,245.26 as a condition of probation.

II. DISCUSSION

Defendant argues that the court abused its discretion in ordering restitution in the full amount of the victim’s medical bill because the victim might have been eligible for a discount from the medical provider.

Penal Code section 1202.4, subdivision (f) states that in any case in which the victim has suffered economic loss as a result of the defendant’s conduct, “[t]he court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so” This includes medical expenses. (Pen. Code, § 1202.4, subd. (f)(3)(B).) In determining that amount, the court “ ‘may use any rational method . . . as long as it is reasonably calculated to make the victim whole.’ ” (*People v Millard* (2009) 175 Cal.App.4th 7, 26 (*Millard*).) A trial court has broad discretion in fixing the amount of restitution. (*Ibid.*)

The standard of review in a restitution case is abuse of discretion (*Millard, supra*, 175 Cal.App.4th at p. 26), although some courts also apply a substantial evidence test. (*People v Thygesen*, (1999) 69 Cal.App.4th 988, 992-993.) The standards are not

mutually exclusive here. An award is rational and, thus, not an abuse of discretion, if it is supported by substantial evidence. (*Id.* at p. 993.)

The medical bill is substantial evidence of the victim's loss and supports the award given by the trial court. Once the victim has shown his or her economic loss, "the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim." (*People v Prosser* (2007) 157 Cal.App.4th 682, 691.) Defendant had three months in which to do this research. He came up with nothing.

Defendant claims a trial court may not order restitution for the full amount of a medical bill if that bill may be discounted. In doing so, defendant relies on the rationale of *Millard*, which held that reimbursement of medical expenses "generally does not support inclusion of amounts of medical bills in excess of those amounts accepted by medical providers as payment in full." (*Millard, supra*, 175 Cal.App.4th at p. 27.)

In *Millard*, the defendant seriously injured a motorcyclist in a traffic accident and was found guilty of driving under the influence and causing bodily injury to another person. (*Millard, supra*, 175 Cal.App.4th at pp. 17, 19.) The victim was billed \$418,081 for treatment but was awarded only \$133,286 in restitution for his medical expenses, the amount the victim's insurance ultimately paid for his treatment. (*Id.* at p. 22.) The award was sustained on appeal because "the trial court applied a rational method to reasonably calculate [the victim's] medical expenses" by using the amount actually paid by the victim's insurer to his medical providers. (*Id.* at pp. 28-29.)

Defendant in our case provided no evidence similar to that produced in *Millard, supra*, 175 Cal.App.4th 7. The mere possibility of a discount does not constitute evidence sufficient to undermine the decision of the trial court. We do not "reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact." (*People v Baker* (2005) 126 Cal.App.4th 463, 469.)

No abuse of discretion in a restitution award "occurs as long as the determination of economic loss is reasonable, producing a nonarbitrary result." (*People v Giordano* (2007) 42 Cal.4th 644, 665.) In the absence of any actual evidence of a discount, the trial

court's reliance on the single piece of evidence available as its guide to determining restitution was reasonable. We thus conclude there was no abuse of discretion.

III.
DISPOSITION

The judgment of the trial court is affirmed.

Margulies, J.

We concur:

Humes, P.J.

Banke, J.