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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL G. CUEVAS,

Defendant and Appellant.

2d Crim. No. B269023
(Super. Ct. No. MA064920)
(Los Angeles County)

Samuel G. Cuevas appeals a judgment containing a victim restitution order following his nolo contendere plea to making criminal threats. (Pen. Code, § 422, subd. (a).)¹ We conclude, among other things, that the trial court did not err by ordering restitution for the victim’s lost income. We affirm.

FACTS

Cuevas was the “ex-husband” of Lindsey Bianco. In September 2014, Cuevas made a series of text messages, emails and phone calls threatening Bianco. He indicated that he would “commit a crime which would result in death and great bodily injury” to her.

In the early morning hours of September 28, Cuevas tried to enter Bianco’s home through a sliding glass door. He ripped the door “out of the frame.” Because of his actions, Bianco felt “unsafe” at home. She contacted the police.

¹ All statutory references are to the Penal Code.

Cuevas entered into a plea agreement and pled nolo contendere to making criminal threats. (§ 422, subd. (a).) He was sentenced to three years in state prison, “execution of sentence” was “suspended,” and he was placed on formal probation. At the sentencing hearing, the trial court ordered Cuevas to “make restitution” to Bianco “in an amount to be determined.”

The trial court held a hearing to determine the amount of restitution for Bianco. Bianco testified that she had a “child-care preschool business” at her home. After the September 28th incident, she ordered a home “security system.” Because of Cuevas’s actions, she felt unsafe at home and had to “relocate [her] business.” She had to stay at a hotel. Parents who had paid her for child-care services stopped sending their children to her. As a result, Bianco suffered a loss to her child-care business of \$2,300 a month “over a period of six months” for a total loss of income of \$13,800.

The trial court ordered restitution for lost income in the amount of \$13,800. It also ordered restitution of \$62 for a screen door Cuevas damaged, \$539.85 for a home security system, and \$300.49 because Bianco had to rent a hotel room. The court also ordered \$3,807 to the Victim Compensation and Government Claims Board for reimbursement for amounts paid for counseling for Bianco and “her family.”

DISCUSSION

Victim Restitution for Lost Income

Cuevas contends the trial court abused its discretion by awarding restitution for Bianco’s lost income in the amount of \$13,800. We disagree.

“A restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim with a windfall.” (*People v. Garcia* (2011) 194 Cal.App.4th 612, 617.) “The trial court is not required to order restitution equal to the exact amount of the loss, but it must employ a rational method that makes the victim reasonably whole.” (*Ibid.*) “The restitution order may not be arbitrary or capricious.” (*Ibid.*) “The only limitation the Legislature placed on victim restitution is that the loss must be an ““economic loss”” incurred as a result of the defendant’s criminal

conduct.” (Ibid.) The word “loss” must be construed “broadly and liberally.” (*People v. Crisler* (2008) 165 Cal.App.4th 1503, 1508.)

Once the victim makes a showing of economic loss, “the burden shifts to the defendant to disprove the amount of losses claimed by the victim.” (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.) The trial court may consider the testimony of a property owner about damage or losses to his or her property as “a prima facie showing of economic losses.” (Ibid.; *People v. Prosser* (2007) 157 Cal.App.4th 682, 684.) “A restitution order is reviewed for abuse of discretion” (*Gemelli*, at p. 1542.)

The trial court awarded restitution for “loss of wages” in the amount of \$13,800. This award was based on Bianco’s testimony of a “wage loss” of \$2,300 a month “over a period of six months” for a total loss of income from that business of \$13,800. Bianco testified she had a “child-care preschool business” at her home and Cuevas’s actions harmed that business. Cuevas had broken into her house and police responded.

For “safety reasons,” Bianco had to notify parents who paid her for child-care services about that incident. Those parents did not feel “comfortable keeping their children there.” Bianco did not “feel safe in that home.” Because of Cuevas’s “actions,” she had to “relocate [her] business.” Parents stopped sending their children there because Bianco “was in the process of relocating.”

Cuevas contends the trial court’s restitution order of \$13,800 for lost income was based on speculation and the amount of loss was not properly documented. He claims Bianco’s testimony alone was insufficient to support the court’s findings because it was not accompanied by financial documents and business records.

““Section 1202.4 does not, by its terms, require any particular kind of proof.”” (*People v. Lockwood* (2013) 214 Cal.App.4th 91, 96.) The trial court’s reliance on Bianco’s testimony was proper. As a business owner, Bianco was qualified to testify about the impact and financial loss to her business caused by Cuevas’s actions. (*People v. Prosser, supra*, 157 Cal.App.4th at pp. 684-685.) In *Prosser*, the court held a trial court could consider victim testimony about the value of stolen jewelry “even though

it was unsupported by receipts or appraisals, and even though a detailed description of each piece of jewelry was not given.” (*Id.* at p. 685.)

Bianco operated this business for over nine years. She described: 1) the loss of income she sustained for *each of the parents* who did not use her services during the six-month period, and 2) the method she used to determine the total loss of income figure. The trial court admitted a packet of 20 pages of documents Bianco prepared to support her testimony. On page 10 of that packet, she listed the loss of income to her business. The prosecutor asked, “Did you itemize how you got to this amount?” Bianco: “Yes.” Prosecutor: “And is that on the tenth page of this packet?” Bianco: “Yes.” Bianco’s testimony was uncontradicted. The court found she was “very credible.” Her credibility was exclusively a matter for the trier of fact. (*People v. Itehua* (2014) 227 Cal.App.4th 356, 359.)

We have reviewed Cuevas’s remaining contentions and conclude he has not shown grounds for reversal.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Daviann L. Mitchell, Judge
Superior Court County of Los Angeles

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Eric J. Kohm, Deputy Attorney General, for Plaintiff and Respondent.