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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN J. ADKINS,

Defendant and Appellant.

B269743

(Los Angeles County
Super. Ct. No. MA067322)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Rachel Lederman, 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, Victoria B. Wilson, Supervising Deputy Attorney General, David E. Madeo, Deputy Attorney General, for Plaintiff and Respondent.

Defendant John J. Adkins pleaded no contest to first degree burglary with a person present (Pen. Code, § 459),¹ and admitted to a prior conviction under the three strikes law (§§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)).² Defendant was sentenced to four years in state prison, consisting of the low term of two years, doubled due to the prior strike conviction. The trial court ordered defendant to pay restitution to the victim in the amount of \$2,246.11 plus 10 percent interest, including \$250 for reprogramming the victim's garage door and gates.

Defendant contends there is insufficient evidence to support the portion of the restitution order awarding the victim \$250 to reprogram the garage door and gates. We conclude substantial evidence supports the restitution order and therefore affirm.

FACTUAL AND PROCEDURAL SUMMARY³

On October 30, 2015, defendant burglarized the garage of Roy Padgett, taking Padgett's car during the burglary. The car was eventually recovered, with a pair of sunglasses missing from the car. Defendant drove the car 350 miles, using a tank of gas on his drive. Defendant also damaged the body of the car. After the burglary, Padgett changed the locks on his home and had his garage doors and gates reprogrammed.

Padgett filled out a victim restitution form, listing his losses. The list included the \$250 expense of reprogramming the garage door and gates, the only item in dispute on appeal. Padgett included the following description in the restitution form: "Brooke's

¹ Statutory references are to the Penal Code unless otherwise stated.

² An additional charge of driving or taking a vehicle (Veh. Code, § 10851, subd. (a)) was dismissed.

³ Because defendant entered his no contest plea before the preliminary hearing, we take the facts as stated in the probation report.

Garage Doors Lic 828098 661-274-4297 Est [¶] Garage Doors Programmed 125.00
Gates Reprogrammed 125.00 . . . \$250.00.”

A restitution hearing was held after defendant declined to accept the amount requested by the prosecutor. Padgett testified to specific losses he incurred as a result of defendant’s burglary, including the cost of changing the locks on his home, a missing pair of sunglasses, auto body damage to his car, mileage put on his car, and gas. Padgett did not specifically testify to reprogramming his garage doors and gates, but he did testify that the victim restitution form he filled out was accurate. This form was admitted into evidence without objection by defendant.

After reviewing the evidence, the court awarded Padgett \$2,246 in restitution, including the \$250 for reprogramming the garage door and gates, which defendant disputes on appeal.

DISCUSSION

Standard of Review

The standard of review for a restitution order is abuse of discretion. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26 (*Millard*); *People v. Akins* (2005) 128 Cal.App.4th 1376, 1382 (*Akins*).) “In determining the amount of restitution, all that is required is that the trial court ‘use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’ (*People v. Thygesen* [(1990) 69 Cal.App.4th 988,] 992; see *In re Brian S.* (1982) 130 Cal.App.3d 523.) The order must be affirmed if there is a factual and rational basis for the amount. (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562.)” (*Akins, supra*, at p. 1382.) ““In reviewing the sufficiency of the evidence [to support a factual finding], the “power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the trial court’s findings.” [Citations.] Further, the standard of proof at a restitution hearing is by a preponderance

of the evidence, not proof beyond a reasonable doubt. [Citation.] “If the circumstances reasonably justify the [trial court’s] findings,” the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] 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. [Citations.]’ (*People v. Baker* [(2005)] 126 Cal.App.4th [463,] 468-469.)” (*Millard, supra*, at p. 26.)

Analysis

Defendant contends that the restitution award should be reduced by \$250 for the expense of reprogramming the garage door and gates, claiming that this part of the award was not supported by substantial evidence at the restitution hearing. We disagree.

“The California Constitution gives crime victims a right to restitution and, consequently, requires a court to order a convicted wrongdoer to pay restitution in every case in which a crime victim suffers a loss. (Cal. Const., art. I, § 28, subd. (b)(13)(B).) To implement this requirement, section 1202.4, subdivision (f), generally provides that ‘in 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.’” (*People v. Sy* (2014) 223 Cal.App.4th 44, 62.) The restitution award “shall be of a dollar amount that is sufficient to fully reimburse the victim . . . for every determined economic loss incurred as the result of the defendant’s criminal conduct, including . . . [¶] [f]ull or partial payment for the value of damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.” (§ 1202.4, subd. (f)(3)(A).) As victim restitution is required under both the Constitution and section 1202.4, “[t]he only discretion retained by the trial court in this regard is in fixing the amount of the award.” (*People v. Rowland* (1997) 51 Cal.App.4th 1745, 1751.)

A restitution hearing lacks the formality of a criminal trial, and therefore ““judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.” [Citation.]’ (*People v. Baumann* (1985) 176 Cal.App.3d 67, 81.)” (*People v. Foster* (1993) 14 Cal.App.4th 939, 947, superseded by statute on another ground as noted in *Millard, supra*, 175 Cal.App.4th at p. 42.) Section 1202.4 does not require that a sentencing judge must look to any particular kind of proof to establish the value of the loss a victim suffered. (*People v. Lehman* (2016) 247 Cal.App.4th 795, 801; *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542-1543 (*Gemelli*)). For example, a sentencing judge may rely on the victim’s opinion of a value of an item without a supporting receipt (see *People v. Prosser* (2007) 157 Cal.App.4th 682, pp. 690-691 (*Prosser*)), or a victim’s statement made in a probation report (see *Gemelli, supra*, at p. 1543).

“At a victim restitution hearing, a prima facie case for restitution is made by the People based in part on a victim’s testimony on, *or other claim or statement of*, the amount of his or her economic loss.” (*Millard, supra*, 175 Cal.App.4th at p. 26, italics added.) “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.” (*Prosser, supra*, 157 Cal.App.4th at pp. 690-691.)

Here, Padgett submitted a statement of loss. He testified the statement was accurate. The statement was admitted as an exhibit. Defendant presented no evidence at trial to refute the \$250 loss related to the garage door and gates, and he tenders no argument on appeal that the loss was not suffered. The trial court acted well within its considerable discretion in awarding the \$250 requested, and substantial evidence supports that determination. Nothing more is required to affirm the award.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P.J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.