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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

KIMI KOLLETTE MATSUNO,

Defendant and Appellant.

C068008

(Super. Ct. No. SF112602A)

Defendant Kimi Kollette Matsuno pleaded guilty to charges of embezzlement and burglary. She was awarded probation, ordered to pay various fines and fees, and ordered to pay \$28,600 in restitution to her victim. Defendant appeals, claiming the restitution order was an abuse of the trial court's discretion, and the court erred in calculating the amount of restitution.

We do not agree the restitution order was an abuse of the trial court's discretion; we do, however, agree the court's calculations are not supported by the record on appeal. Accordingly, we will remand the matter for the limited purpose of directing the trial court to explain the basis for its calculations on the record and make all necessary corrections to the restitution order, if any.

BACKGROUND

From October 2007 to July 2009, defendant worked as a bookkeeper for Central Valley Appliance (CVA), a business owned by Reinhard Kummerle. She was terminated from her position in July 2009, after Kummerle learned defendant was embezzling money from the business. Defendant was subsequently charged with grand theft by embezzlement (Pen. Code, § 487, subd. (a)),¹ embezzlement (§ 503), and second degree commercial burglary (§ 459). The alleged victim was identified as CVA, and it was alleged the crimes were committed on or about April 1, 2009, through July 15, 2009. It was further alleged that defendant was previously convicted of two felonies and served a prior prison term.

Defendant pleaded guilty to embezzlement and burglary. In exchange for her plea, the remaining charge was dismissed and the enhancement allegations stricken. Defendant was placed on five years of formal probation, ordered to serve 365 days in county jail, and ordered to pay various fines and fees. Defendant also was ordered to pay restitution to the victim in an amount to be determined.

The hearing on restitution began on May 12, 2010. Kummerle testified that he was contacted by the company who handled the credit card processing for CVA. Together they discovered \$3,569.01 in credit card refunds that should have been credited to CVA's account, but were credited to either defendant's account or her boyfriend's.

The People then introduced into evidence two "packets of documents," one for 2008 and one for 2009; both included invoices and receipts for appliances at CVA. Defendant objected to the 2008 documents, arguing that the amended information only charged her with crimes committed in 2009. The court overruled the objection.

¹ Undesignated statutory references are to the Penal Code.

When asked how he compiled the documentation to support his claimed losses, Kummerle explained that he and “two other secretaries” went “through all the paperwork” to determine whether there were losses other than the money found by the credit card company. They pulled any invoices with irregularities in an effort to find appliances that were purchased by CVA but were not in the warehouse and for which CVA had no record of payment by a customer.

Kummerle then separated those documents into the two packets produced by the People, one for losses in 2008 and one for losses in 2009. The paperwork in each year was then broken into two more groups: one reflected missing inventory for which he had some documentation, the other was for missing inventory for which there was no documentation. Kummerle acknowledged that calculating his total losses was difficult because defendant “had full control over all of [the] paperwork,” during the time she worked for him and he may not be “correct in all of these.” He was, however, certain that these types of losses did not occur before defendant began working for him and stopped occurring after she was fired.

Thus, according to Kummerle’s records, his total losses attributable to defendant were \$49,952.45. The matter was continued to allow defendant the opportunity to investigate the invoices Kummerle claimed were irregular.

The hearing resumed nearly one year later. As a result of defendant’s investigation, the People agreed that \$18,224.28 of the losses claimed by Kummerle were not attributable to defendant. Defendant was thus ordered to pay \$28,600 in direct restitution to Kummerle.

DISCUSSION

I

Defendant contends the trial court abused its discretion in ordering defendant to pay, without a *Harvey*² waiver, losses that were outside the dates alleged in the information. Defendant is wrong.

When a defendant is awarded probation as part of a plea agreement and the plea “does not expressly or impliedly include uncharged incidents, a *Harvey* waiver is not required.” (*People v. Snow* (2012) 205 Cal.App.4th 932, 939 (*Snow*).)

Moreover, “section 1203.1, subdivision (j) grants broad discretion to the trial courts to prescribe the conditions of probation to foster rehabilitation and to protect public safety. [Citation.] The court is not limited to the transactions or amounts of which defendant is actually convicted. Indeed, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction. [Citation.] Restitution has also been found proper for conduct of which a defendant has been acquitted [citation] uncharged conduct, and conduct for which the statute of limitations has run [citation]. ‘[I]t is well settled that a court may impose a victim restitution order as a condition of probation regardless of whether or not the defendant has been convicted of the underlying crime.’ [Citation.]” (*Snow*, supra, 205 Cal.App.4th at pp. 939-940, fn. omitted.)

“The test for determining the validity of a restitution order as a condition of probation is the same as for any other condition of probation that requires or forbids conduct that is not itself criminal. The condition must reasonably be related either to the crime of which defendant is convicted *or* to the goal of deterring future criminality. [Citations.] We review the imposition of any condition of probation for abuse of discretion and reverse only when the trial court’s determination is arbitrary or capricious

² *People v. Harvey* (1979) 25 Cal.3d 754.

or ‘ “ “exceeds the bounds of reason, all of the circumstances being considered.” ’ ’ ’
[Citation.]” (*Snow*, supra, 205 Cal.App.4th at p. 940.)

The order that defendant pay restitution to the victim for business losses attributable to her satisfies either prong of that test. Defendant was convicted of embezzling from Kummerle; ordering her to reimburse him for the amount she embezzled is directly related to the crime for which she was convicted. Moreover, compelling defendant to reimburse Kummerle for the money she embezzled is likely to deter her from committing similar crimes in the future.

We thus conclude the trial court’s order was neither arbitrary nor capricious.

II

Defendant further contends the trial court abused its discretion by basing the amount of restitution upon information that was “vague or inaccurate.” Specifically, defendant argues the victim’s testimony regarding his losses was “vague, unreliable, and inaccurate. . . .” We are not persuaded.

In determining the amount of restitution and the victim’s loss, “ ‘any rational method’ ” may be employed and due process is satisfied as long as the “ ‘informational inputs’ ” are reasonably accurate and reliable. (*People v. Goulart* (1990) 224 Cal.App.3d 71, 83.) Defendant bears the burden of showing the victim’s estimates are excessive. (*Id.* at pp. 83-84.)

At the restitution hearing, Kummerle explained how he and his secretaries identified irregular invoices, which reflected “missing” inventory, during the time defendant was working for CVA. Kummerle itemized those invoices for the court to support his claimed losses. Kummerle said CVA did not have losses such as these before he hired defendant and CVA no longer had them after she was fired. Kummerle admitted he was not certain all of the irregular invoices he identified were attributable to defendant embezzling; he was, however, as certain as he could be given that she was the person in control of the paperwork during that time period.

Given the circumstances here, where defendant was the person in charge of paperwork and admittedly embezzling from CVA, Kummerle's method for determining his losses was not irrational. That defendant was able to prove \$18,224.28 of the claimed losses were not attributable to her does not diminish the rationality of the methodology used to identify losses attributable to defendant, nor does it render Kummerle's testimony "suspect" as defendant contends. What defendant's investigation does show, is that the methodology accepted by the trial court to calculate restitution was not perfect. The trial court is not required to be perfect in its methodology for calculating restitution, only rational. (*People v. Goulart, supra*, 224 Cal.App.3d at p. 83.)

We thus conclude the court did not abuse its discretion in relying on Kummerle's testimony and documentation to calculate restitution.

III

Defendant further claims that, even excluding the other claimed errors on appeal, the amount of restitution ordered by the trial court is not supported by the record. The People agree "it is not clear from the record how the court arrived at the total amount of restitution," but argues we need not remand the matter for clarification.

After reviewing the record, we agree it is unclear how the trial court reached \$28,600 based on the amounts testified to at the restitution hearing. The amounts recited by the court on the record are inconsistent with the amounts testified to at the restitution hearing. There may have been some discussion off the record that resulted in a change to the numbers found in the record, there may have been a math error, or a simple transcription error. In any event, we are not in a position to determine precisely what the trial court was looking at or taking into account when ordering the final amount of restitution.

Accordingly, we remand this matter for the limited purpose of having the trial court clarify how the amount of restitution was calculated and make any necessary corrections to the restitution order based on that clarification.

DISPOSITION

The matter is remanded for the limited purpose of allowing the trial court to clarify how the amount of restitution was calculated and make any necessary corrections to the amount of restitution order based on that clarification. The judgment is otherwise affirmed.

BLEASE _____, Acting P. J.

We concur:

HULL _____, J.

DUARTE _____, J.