

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES FREEMAN WELTS, JR.,

Defendant and Appellant.

C078197

(Super. Ct. No. CRF132416)

A jury found defendant James Freeman Welts, Jr., guilty of grand theft and misdemeanor vandalism. In a bifurcated proceeding, defendant admitted that he had served three prior prison terms. The trial court imposed a split sentence of five years, with nine months in local custody and four years three months under mandatory supervision. The trial court also ordered victim restitution in the amount of \$1,370, plus a \$100 collection fee.

On appeal, defendant contends the restitution order was improper. We conclude the trial court did not abuse its discretion, and therefore affirm the judgment.

I. BACKGROUND

Following a car accident in 1993, Rosalio Perez obtained a medical marijuana recommendation that allowed him to possess up to 99 marijuana plants. In September 2013, Rosalio was growing about 50 marijuana plants in his backyard.

At around 5:00 a.m. on September 30, 2013, Rosalio's wife, Oliva Perez, was awoken by the sound of her dog barking in the backyard. She looked out a window and saw a man, who she later identified as defendant. When she turned on the outside light and went into the backyard, defendant took off running. Oliva followed defendant until she reached her backyard fence. She looked over the fence and saw defendant walking down the street. She watched him until he was stopped by a police officer. Oliva then called her son Paulo.

When Paulo arrived about 10 minutes later, he inspected the backyard and noticed that four marijuana plants were missing. He also noticed that some of the boards on the backyard fence were broken. He looked through the broken portion of the fence and saw a pile of marijuana plants and a pair of gardening shears. Shortly thereafter, he informed the police that someone had stolen marijuana plants from his mother's backyard, and that some of the board's on his mother's fence had been broken.

Defendant told the police that he had been recycling. However, he did not have any recyclables or any bags to put recyclables in. He had dirt on his knees and was wearing a pair of gardening gloves. The police officer that stopped defendant noticed an "overwhelming" smell of marijuana coming from defendant and his gloves. Eventually, defendant was searched and found to be in possession of several knives and flashlights.

When the police inspected the fence near the Perez residence, they found four marijuana plants and a pair of gardening shears. Defendant's gardening gloves were subsequently examined and found to have marijuana residue on them.

Following a jury trial, defendant was found guilty of grand theft (Pen. Code, § 487, subd. (a))¹ and misdemeanor vandalism (§ 594, subd. (b)(2)(A)). In a bifurcated proceeding, defendant admitted that he had served three prior prison terms. (§ 667.5, subd. (b).) The trial court imposed a split sentence of five years, with nine months in local custody and four years three months under mandatory supervision. The trial court also ordered victim restitution in the amount of \$1,370 (\$1,000 for the plants and \$370 for the damage to the fence), plus a \$100 collection fee.

Defendant filed a timely notice of appeal.

II. DISCUSSION

Defendant contends the trial court abused its discretion in awarding \$1,000 in victim restitution for the marijuana plants. According to defendant, the replacement value of the plants was not established by substantial evidence. We disagree.

Restitution is constitutionally and statutorily mandated in California. (Cal. Const., art. I, § 28(b)(13); *People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) This mandate is implemented in section 1202.4, which provides, in part, that “a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.” (§ 1202.4, subd. (a)(1).)

“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. [Citations.]” (*People v. Millard* (2009) 175 Cal.App.4th 7, 26; see *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 (*Gemelli*) [“as prima facie evidence of loss, [a trial court] may accept a property owner’s statement made in the probation report about the value of stolen or damaged property”].) “Once the victim has made a prima facie showing of his or her loss, the burden shifts to

¹ Undesignated statutory references are to the Penal Code.

the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]” (*People v. Prosser* (2007) 157 Cal.App.4th 682, 691.) “The defendant has the burden of rebutting the victim’s statement of losses, and to do so, may submit evidence to prove the amount claimed exceeds the repair or replacement cost of damaged or stolen property.” (*Gemelli, supra*, at p. 1543.)

We review a restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.) That “standard is ‘deferential,’ but it ‘is not empty.’ [Citation.] ‘[I]t asks in substance whether the ruling in question “falls outside the bounds of reason” under the applicable law and the relevant facts [citations].’ [Citation.]” (*Ibid.*)

“ ‘ ‘ ‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] ‘ ‘ ‘When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.’ ’ [Citations.]” [Citation.] However, a restitution order “resting upon a ‘ ‘ ‘demonstrable error of law’ ’ constitutes an abuse of the court’s discretion. [Citation.]” [Citation.] “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. [Citation.]” [Citation.]

“ ‘ ‘ “[T]he court’s discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole. [Citations.]” [Citations.] “There is no requirement

the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action.” ’ ’ [Citation.]” (*People v. Sy* (2014) 223 Cal.App.4th 44, 63.)

Here, Rosalio requested restitution in the amount of \$10,370, consisting of \$370 to repair the broken fence and \$10,000 for the marijuana plants. At the restitution hearing, the trial court recalled Rosalio’s trial testimony in which he estimated that each of the marijuana plants could yield as much as \$6,000 worth of marijuana if the plants had grown to full maturity.² The court noted that Rosalio’s estimate was based on the replacement value of the marijuana if it was purchased at a medical marijuana dispensary. The court then stated that it had continued the matter to see if Rosalio had documentation for his out-of-pocket losses. The prosecutor said that Rosalio did not have any documentation, but stated that Rosalio had spent \$667 on fertilizer, sod, and bamboo to fix the damage caused by defendant. Defendant argued that Rosalio’s loss should be limited to the replacement value of the plants, which he claimed was “only a couple of dollars per plant.” Defendant, however, did not offer any evidence in support of his position.

In reaching its decision to award victim restitution in the amount of \$1,000 for the marijuana plants, the trial court reasoned as follows: “So my take on the missing four plants is that the loss should have been absorbed or should have been able to be absorbed by the victims. And it’s hard for me to imagine that [the victims] had to run out to the

² Rosalio testified at trial that the marijuana plants were about four to five weeks away from full maturity. He estimated that one plant could produce anywhere from one-quarter of a pound to three pounds of marijuana. He further testified that it would cost him over \$6,000 to purchase one pound of marijuana from a medical marijuana dispensary. Paulo testified that \$10,000 was a conservative figure because one plant could yield a pound of marijuana, which would cost approximately \$6,000 at a dispensary.

dispensary in order to purchase marijuana when they had many plants to pick from. Maybe they weren't all ready for harvest. Maybe the four that were taken by [defendant], maybe those were the only four that were mature enough to be harvested. That's possible. But there were lots of other plants left. That's not to say that they're not entitled to some reimbursement for the plants themselves and for, perhaps, the labor that went into . . . tend[ing] and help[ing] them grow.”

We conclude there was a sufficient basis for the trial court's restitution order. We bear in mind that a victim's right to restitution for economic losses resulting from the defendant's criminal acts is to be construed broadly and liberally (*People v. Prosser*, *supra*, 157 Cal.App.4th at p. 686), and that a victim restitution order should be reversed “ ‘only if the appellant demonstrates a clear abuse of discretion. [Citation.]’ ” (*Id.* at p. 690.) The court here employed a rational method of attempting to calculate the victim's economic losses. Because there was “a factual and rational basis for the amount of restitution ordered by the trial court” (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562), the order must be affirmed.

III. DISPOSITION

The judgment is affirmed.

/S/

RENNER, J.

We concur:

/S/

BLEASE, Acting P. J.

/S/

NICHOLSON, J.