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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ANGELO VILLARREAL,

Defendant and Appellant.

E052838

(Super.Ct.No. INF10001576)

OPINION

APPEAL from the Superior Court of Riverside County. Randall Donald White, Judge. Affirmed.

Brendan M. Hickey, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Donald W. Ostertag, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant David Angelo Villarreal appeals after he pleaded guilty to theft. As part of his sentence, defendant was ordered to pay \$1,500 in restitution to compensate the victim for moving expenses. Defendant contends that this restitution order was improper. He argues that the victim was caused to move by (1) crimes committed by other persons, and/or by (2) criminal conduct of which he was not convicted. Thus, he argues, the criminal conduct of which he was convicted was not related to or did not cause the victim to incur the expense, and the restitution order was therefore improper. We disagree. Whether or not other actors may also have committed crimes that may have contributed to the victim's decision to move, and even if defendant was not charged with or convicted of other crimes (e.g., criminal threats) that contributed to her decision to move, the criminal conduct that he did commit had a sufficient causal nexus to the victim's economic loss to support the restitution order. The context of his crime was a series of threats to the victim that she must move or her house would be burned down. In that context, defendant's criminal conduct—theft of a blowtorch—was responsible for the victim's loss. We affirm.

FACTS AND PROCEDURAL HISTORY

On or about July 19, 2010, defendant went with his brother and a woman named Maria to the victim's residence. The victim testified at the preliminary hearing that Maria pushed her way into the home and began hitting her about the face and head. A few minutes later, defendant and his brother entered. Defendant walked around the house, picking up objects. Eventually, he picked up a blowtorch and said that his father “was going to be upset with” her. The victim was told she had to move out of the

neighborhood or defendant's father would burn her house down. (The victim initially told police that defendant's brother had made the threat, but she testified at the preliminary hearing that it was defendant who conveyed the message.) Defendant, his brother, and Maria then left. Defendant took the blowtorch with him. As the three invaders left, the victim heard the sound of glass breaking; defendant's brother smashed the victim's car with a bat or sledge hammer, breaking all of the windows, smashing the lights and mirrors, and damaging the doors.

Three days later, a group of men, including defendant's father and brother, invaded the victim's house and told her to move from the neighborhood or they would burn her house down. After these incidents, the victim felt compelled to move; the police also told her she had to move. She therefore applied for relocation benefits of \$1,500 from the victim compensation fund.

In the meantime, defendant had been arrested; he was initially charged with burglary, while his brother was charged with burglary, destruction of property, and making criminal threats. Defendant was already in custody on the date of the second encounter with the victim, and he did not participate in that confrontation.

Defendant was held to answer on the sole charge of burglary. After the preliminary hearing, the People filed an information alleging both burglary and a charge of criminal threats, based on the victim's preliminary hearing testimony identifying defendant as the person who made the threat. Later, the information was amended orally to allege an additional count, grand theft from the person. (Pen. Code, § 487, subd. (c).) Defendant agreed to plead guilty to the grand theft charge with the specification that the

sentence would be two years in state prison. The remaining charges were dismissed and all enhancements were stricken.

The court sentenced defendant as agreed to two years in state prison, with credit for time already served, plus the imposition of a restitution fine, a parole revocation fee, and other matters. The plea stipulation also specified that a further hearing would be held on the issue of restitution, i.e., reimbursement of the moving expenses for which the victim had applied to the victim restitution fund, which had been paid from the California Governmental Claims Board, pursuant to Penal Code section 1202.4, subdivision (f)(2). After that hearing, the trial court imposed the order challenged here, requiring defendant to reimburse the moving expenses.

Defendant has filed a notice of appeal. Because the matter arises as an issue of sentencing, not affecting the validity of the underlying plea, the appeal is proper under Penal Code sections 1237 and 1237.5. (See also Cal. Rules of Court, rule 8.304(b)(4)(B).)

ANALYSIS

I. Standard of Review

A restitution order is generally reviewed for abuse of discretion. (*People v. Chrisler* (2008) 165 Cal.App.4th 1503, 1507.) Defendant urges that the trial court abused its discretion because its restitution order was based upon “ ‘ ‘ ‘ ‘a demonstrable error of law.” ’ ’ ’ ’ (See *People v. Duong* (2010) 180 Cal.App.4th 1533, 1537.)

II. The Trial Court Did Not Abuse Its Discretion in Ordering Defendant to Pay Restitution for the Victim's Relocation Expenses

Penal Code section 1202.4, subdivision (f), provides that the trial court must require a defendant to pay restitution to a victim “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct.”

Defendant does not dispute the amount or the reasonableness of the claimed loss (\$1,500 for relocation expenses) incurred by the victim. The crux of defendant’s argument lies with the issue of causation: he contends that his criminal conduct—he was convicted only of grand theft from the person—did not cause the victim to move. Rather, it was crimes committed by others that caused the victim to move. Thus, defendant argues that the court does not have discretion to impose restitution for any loss that was not directly attributable to the offense of which the defendant was convicted. (See *People v. Lai* (2006) 138 Cal.App.4th 1227, 1249.) The court also may not impose restitution for crimes committed by a codefendant rather than the defendant. (*People v. Leon* (2004) 124 Cal.App.4th 620, 622.)

On appeal, defendant maintains that, it was “impermissible for the trial court to order [defendant] to pay \$1,500 in restitution for [the victim’s] relocation expenses because her need to relocate was caused by the actions of [defendant’s father] on July 22, with which [defendant] had absolutely no involvement. Moreover, the events of July 19 which purportedly contributed to [the victim’s] need to relocate – threats and an assault – were offenses [defendant] did not commit and was not convicted of committing. Because

[defendant] was sentenced to prison and did not enter a *Harvey* waiver,¹ the judge was not permitted to order [defendant] to pay restitution for any loss not proximately caused by his act of theft.”

If there had been a proper *Harvey* waiver, or if defendant had been granted probation, the trial court would have had discretion “to consider facts underlying dismissed counts in determining the appropriate disposition for the offense of which the defendant was convicted.” (See *People v. Moser* (1996) 50 Cal.App.4th 130, 132-133.) In the absence of a *Harvey* waiver, however, defendant argues that the trial court could not properly consider any facts relating to dismissed charges or uncharged acts in holding him responsible for the victim’s moving expenses.

Defendant is incorrect, however, in his belief that the facts underlying his conviction had nothing to do with the victim’s fear and her decision to relocate.

The victim did not state that the second invasion on July 22 was the sole cause of her decision to move. Rather, the victim indicated that both the incident on July 19, 2010 (defendant participating), and the second home invasion and confrontation that took place on July 22, 2010 (defendant absent), were causative factors. The victim was asked, “And after *these incidents*, did you feel it was necessary to relocate from your residence . . . ?” She replied, “*Yes, I did.*” (Italics added.) Sergeant Oliver, who was assigned to the matter, filled out a “law enforcement relocation verification form,” recommending to the victim that she relocate, based on both incidents.

¹ See *People v. Harvey* (1979) 25 Cal.3d 754.

In attempting to establish that it was the second incident, in which defendant's father made threats directly against the victim, that caused the victim to move, defense counsel asked, "So you were frightened of [defendant's] father, not of [defendant]?" The victim stated, "I'm frightened of the whole family."

The facts underlying defendant's conviction for grand theft from the person also cannot be ignored. As noted, the victim specifically testified at the hearing that she was frightened of defendant. She had good reason: As defendant was in the process of committing the theft, he told her that she had to move or her house would be burned down. The specific item of property that defendant stole was a blowtorch. The trial court was not required to divorce some of the facts and circumstances of defendant's offense from other salient facts.

Defendant's reliance on other cases is misplaced. In *People v. Percelle* (2005) 126 Cal.App.4th 164, the trial court ordered restitution to the victim for a theft of which the defendant was acquitted. The Court of Appeal held that this was error, stating: "That is not to say that an acquittal on one count will preclude the imposition of a restitution order under all circumstances. We merely hold that in the nonprobation context, a restitution order is not authorized where the defendant's only relationship to the victim's loss is by way of a crime of which the defendant was acquitted." (*Id.* at p. 180.) Here, defendant's connection to the victim's loss was not solely based on acquitted (or dismissed or uncharged) crimes.

In *People v. Lai, supra*, 138 Cal.App.4th 1227, the defendant had been charged with numerous counts of welfare fraud. The court ordered restitution not only for the loss

incurred by acts committed within the charged period (1985 to 2000) but also for amounts obtained outside the charged period (1980 to 1983). In that case, particular economic amounts were attributable to particular calendar periods, which were charged as criminal acts; it was improper to include amounts that could not be attributed to the charged crimes. Here, defendant's charged criminal conduct contributed to the victim's loss, and did not consist of discrete economic elements such as particular amounts of welfare benefits attributable to particular calendar periods.

In *People v. Woods* (2008) 161 Cal.App.4th 1045, the defendant was convicted as an accessory to murder; he had been handed the murder weapon by the shooter as the shooter ran away from the scene. The Court of Appeal held that the defendant's criminal conduct, which all took place after the murder had occurred, had no causal connection to the victim's economic loss, so that it was improper to order the defendant to pay restitution. The same cannot be said here: the defendant's charged and convicted criminal conduct contributed to the effective cause of the victim's economic loss.

Defendant cites *People v. Scroggins* (1987) 191 Cal.App.3d 502, 507, complaining that the court did not make a finding that the restitution was directly related to his convicted crime. In *Scroggins*, the defendant lived in an apartment complex with his sister. After a series of burglaries at the apartment complex, the defendant's sister notified police that defendant had some of the property. The police arrested the defendant and confiscated the property. One of the burglary victims got all of his property back, but the other three did not. The defendant pleaded guilty to a count of receiving stolen property; the court ordered as a part of the restitution that defendant pay

for the unrecovered property, property losses that he was not charged with having, nor proven to have caused. The appellate court held that this was improper, as the defendant was never charged with nor found to be criminally responsible for the burglaries. Again, discrete items of loss—particular items stolen property—could not be connected or attributed to the specific criminal conduct defendant was proven to have committed. He was only connected to the items of property in his possession, not the unrecovered items.

By contrast, the victim's economic loss in this case—moving expenses—is not similarly divisible into discrete segments, which can be connected only with one specific crime. Defendant's theft of the blowtorch had both a logical and causal nexus to the victim's decision to move. The absence of a specific finding of causation is of no moment. On review of an order under an abuse of discretion standard, we presume the order is correct and imply findings necessary to support it. (*Forrest v. Department of Corrections* (2007) 150 Cal.App.4th 183, 194, overruled on another point in *Shalant v. Girardi* (2011) 51 Cal.4th 1164, 1172, fn. 3.)

The trial court in this case properly held defendant responsible, through his own criminal conduct, for restitution of the funds, which had been issued to pay for the victim's moving expenses.

DISPOSITION

The restitution order is affirmed.

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McKINSTER
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.