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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.

CARLOS ROLANDO,

Defendant and Appellant.

E054016

(Super.Ct.No. FVA1100022)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Ingrid Adamson Uhler, Judge. Affirmed as modified.

Patrick McKenna, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Gil Gonzalez, Garrett Beaumont, and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Pursuant to a plea agreement, defendant and appellant Carlos Rolando pled no contest to receiving stolen property. (Pen. Code, § 496, subd. (a).) In exchange, the trial court sentenced him to three years in state prison, but suspended the sentence and placed him on probation for three years under certain terms, including that he serve 365 days in county jail and participate in the INROADS (Inmate Rehabilitation Through Occupational and Academic Development) program. In addition, the court dismissed three other cases against him. After holding a restitution hearing, the court ordered defendant to be jointly and severally liable with his codefendant to pay victim restitution to Daisy G., the victim who testified at the restitution hearing, in the amount of \$7,301.92.

On appeal, defendant contends that the court abused its discretion in ordering him to pay victim restitution since he was not charged with the burglary of the home of Daisy G. Defendant argues that the restitution order must be stricken because there was insufficient evidence connecting him to the burglary of her home. In the alternative, if this court finds no abuse of discretion, defendant argues that the trial court miscalculated the total and the amount of the restitution order should be revised. We find no abuse of discretion and affirm the restitution order.

II. FACTUAL AND PROCEDURAL BACKGROUND¹

On or about January 3, 2011, defendant and D.F. bought, received, concealed, sold, withheld, or aided in concealing, selling, and withholding property, to wit, assorted jewelry, which had been stolen and obtained by extortion, knowing that it had been stolen and obtained by extortion.

The court held a restitution hearing on July 11, 2011. Daisy G. testified that her house was burglarized on December 7, 2010. She said that she first noticed money and her watch missing, and then noticed other things missing, such as jewelry, some other watches, glasses, and cameras. When asked if the doors to her home were locked on December 7, she said: “Yeah, they were locked. Yeah, everything was locked.” She added that, after she found out her jewelry was missing, she noticed dirty handprints on the bathroom window.

Daisy G.’s sister, Leslie G., also testified at the hearing. Leslie G. initially testified that she heard defendant admit to being involved in the burglary of Daisy G.’s house. When questioned further, she said that two days after the burglary, she was in a car with defendant and heard him say to his girlfriend that “they had came [*sic*] up on watches and stuff,” and that “it was the house . . . that Eder and Guillermo (phonetic spelling) lived at.” Leslie G. testified that Eder and Guillermo were her sister’s neighbors. The court stated that it was confused by her testimony, and asked Leslie G. if

¹ The statement of facts is derived from the facts as stated in the felony complaint. The factual basis of the plea agreement was the police report.

defendant confessed to burglarizing her sister's house or her sister's neighbor's house. Leslie G. said: "I'm not quite sure because he didn't mention a name." When the court asked what defendant actually said, Leslie G. responded: "That there's a house next to Eder and Guillermo's house; that he just came up on some watches." The court then asked how close her sister's house was to Guillermo's house, and Leslie G. said it was "two streets down." The court clarified that defendant said he "came up with some watches," and Leslie G. confirmed. The court asked if that was all defendant said. Leslie G. said: "Well, he was actually talking about another house that he had broke [sic] into." The witness added: "And Guillermo's house was broken into, too, and I'm not quite sure who did that one." The court then dismissed Leslie G.

Mark F., Leslie G.'s boyfriend, also testified at the restitution hearing. He testified that, on December 10, 2010, a police officer, Martin Enriquez, pulled up to him in front of Guillermo and Eder's house and asked if he knew who broke into any of the houses around the neighborhood, since there had been a lot of burglaries there. Mark F. told him no, and the officer asked if he was friends with defendant and D.F. and if he could identify them. Mark F. said yes. The officer showed him a photographic lineup, and Mark F. "circled them" on the paper. Mark F. testified that he was just identifying his friends. The officer also asked Mark F. if anything happened at a park while he was hanging out with defendant. Mark F. said there were 10 people at the park, and then defendant, his girlfriend, and D.F., left in a car. Mark F. denied ever telling the officer

that defendant was involved in the burglary at Daisy G.'s house, or that defendant entered her house through a window.

Officer Enriquez testified next. He testified that he interviewed Leslie G. and Mark F. about the burglary of Daisy G.'s house. Officer Enriquez said that Mark F. told him that, a day after the burglary had occurred, he was sitting in the park adjacent to Daisy G.'s house with defendant, D.F., and another person, and that those three people left the location for a few minutes. When they returned, Mark F. asked where they had gone, and defendant told him that they were involved with a burglary in that area. Officer Enriquez testified that Mark F. told him that defendant said, "[w]e just hit this house," and Mark F. believed that to mean they had just burglarized it. When Officer Enriquez interviewed Mark F. again out in the field, Mark F. was able to point to "the direction of where that address [Daisy G.'s house] was." Upon questioning, Officer Enriquez testified that Mark F. pointed to Daisy G.'s house. Mark F. was told by defendant that all the doors and windows were locked at Daisy G.'s house, except for a rear bathroom window, which was "only accessible by a small person." Officer Enriquez further testified that, when he showed the photographic lineup to Mark F., he had Mark F. identify who could be involved in the burglary, not just point out his friends. On cross-examination, defense counsel asked Officer Enriquez if he was aware that the first officer to write a report on this burglary indicated he could not identify any entry point. Officer Enriquez confirmed. Officer Enriquez also testified that he was never able to recover any of the items that Daisy G. listed as missing from her house.

The trial court determined that Officer Enriquez's testimony was reliable, especially his testimony of a prior inconsistent statement made by Mark F. The court noted that Mark F. was a very close friend of defendant, and then stated its belief that Mark F.'s prior statement to the police was "the actual reliable, credible statement." The court concluded that, in the context of all the testimony it heard, it believed by a preponderance of the evidence that the amount of restitution testified to by Daisy G. was the proper amount of restitution owing, and that it was convinced that defendant was, in fact, involved in the commission of the burglary that resulted in the loss of property. The court ordered defendant and his codefendant, D.F., to be jointly and severally liable for restitution in the amount of \$7,301.92. The court imposed that amount to be collected as a term of defendant's probation. Defendant stated that he was homeless, and he did not know how he was going to pay the restitution. The court said he would have to come to court later to say what was going on in his life, and it could always modify the amount; however, for now, it was going to impose the amount stated. Defendant asserted that he "just received the property," but "didn't steal it." The court said: "I've made my ruling. I feel you were involved in the commission of the burglary based on the testimony I heard. That's the Court's ruling, so now you are obligated to pay it."

III. ANALYSIS

Defendant argues that the court abused its discretion in ordering him to pay victim restitution since the prosecution failed to provide sufficient evidence linking him to the burglary of Daisy G.'s home. We disagree.

First, as a condition of probation, a court may order victim restitution flowing from criminal conduct which is not charged and of which the defendant has neither admitted nor been convicted of. Second, substantial evidence supports the court's factual finding that defendant participated in the burglary and, as such, the court did not abuse its discretion. Lastly, the amount of victim restitution ordered by the court was directly related to defendant's receipt of stolen property.

“[I]n 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 . . . in an amount established by court order, based on the amount of loss claimed by the victim . . . or any other showing to the court.” (Pen. Code § 1202.4, subd. (f).)

“A victim's restitution right is to be broadly and liberally construed.” [Citation.]

““Sentencing judges are given virtually unlimited discretion as to the kind of information they can consider”” in determining victim restitution. [Citations.] Restitution orders are reviewed for abuse of discretion.” (*People v. Phu* (2009) 179 Cal.App.4th 280, 283-284.)

“[I]n imposing [victim] restitution as a condition of probation, ‘[a] court may . . .

consider . . . crimes which were charged but dismissed [citation]; uncharged crimes, the existence of which is readily apparent from the facts elicited at trial [citation]; or even charges of which the defendant was acquitted, if justice requires they be considered.

[Citation.]’ [Citation.]” (*People v. Rubics* (2006) 136 Cal.App.4th 452, 459.) As stated

by the court in *People v. Giordano* (2007) 42 Cal.4th 644: “While we review all restitution orders for abuse of discretion, we note that the scope of a trial court's

discretion is broader when restitution is imposed as a condition of probation. . . . ‘[T]he court is not limited to the transactions or amounts of which defendant is actually convicted. . . .’ [Citation.] Probationary restitution may be imposed even if a defendant has not been convicted for a particular offense ‘because probation is an ““act of clemency and grace,”” not a matter of right. . . . Because a defendant has no right to probation, the trial court can impose probation conditions that it could not otherwise impose, so long as the conditions are not invalid under the three *Lent*^[2] criteria.’ [Citation.]” (*Id.* at p. 663, fn. 7.)

Clearly, based on the above, as a condition of probation the trial court may impose victim restitution for criminal conduct that is neither charged nor admitted by a defendant. Here, while defendant was not charged with burglary or theft, based on the facts elicited at the restitution hearing, the court did not abuse its discretion in ordering victim restitution based on its factual finding that defendant participated in the burglary. While Leslie G.’s testimony was somewhat confusing as to whether defendant participated in the burglary of the victim’s house, sufficient evidence was presented through the testimony of Officer Enriquez to support a finding that defendant was involved in the burglary.

“In reviewing the sufficiency of the evidence, 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.] . . . ‘If

² *People v. Lent* (1975) 15 Cal.3d 481.

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.” (*People v. Baker* (2005) 126 Cal.App.4th 463, 468-469.) The standard of proof necessary to support an order for victim restitution is preponderance of the evidence. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542 [Fourth Dist., Div. Two].)

Officer Enriquez testified that following the burglary, he spoke with Mark F., a friend of defendant's. Officer Enriquez testified that Mark F. told him that on the day following the burglary, defendant told him that defendant and two others were in the park adjacent to the victim's house and that they left the park and “hit this house.” Officer Enriquez further testified that in a second interview with Mark F., Mark F. specifically identified the victim's residence as the house that defendant was referring to when he made the comment, “[w]e just hit this house.” Clearly, sufficient evidence exists to support the court's factual finding that defendant was involved in the burglary and, as such, should be ordered to pay victim restitution.

Lastly, the trial court's victim restitution order was also appropriate based on defendant's admission to receiving stolen property. Here, the property was not returned to the victim. Thus, the present victim sustained a loss directly as a result of defendant's receipt of the property and his subsequent disposition of it. (See *People v. Holmberg* (2011) 195 Cal.App.4th 1310 [where the defendant's conviction of concealing stolen

property (Pen. Code, § 496, subd. (a)), bore a causal relationship to the victim's loss for purposes of victim restitution].)

In sum, the trial court's victim restitution order was not an abuse of discretion. However, in accordance with defendant's argument, it would appear that the trial court misadded various numbers for purposes of reaching its total figure of restitution. We have calculated the sum of the items listed on exhibit No. 1 to be \$7,251.93.

IV. DISPOSITION

The restitution order is modified to \$7,251.93. In all other respects, the matter is affirmed.

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KING
J.

We concur:

HOLLENHORST
Acting P. J.

RICHLI
J.