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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.

BRIAN CRAIG BLONDET,

Defendant and Appellant.

E054341

(Super.Ct.No. FBA1100208)

OPINION

APPEAL from the Superior Court of San Bernardino County. Margaret A. Powers, Judge. Affirmed.

Neil Auwarter, 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, A. Natasha Cortina and Heidi T. Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Brian Craig Blondet pled guilty to receiving stolen property. (Pen. Code, § 496, subd. (a).)¹ In return, two prior allegations were stricken (§ 667.5, subd. (b)), and defendant was sentenced to two years in state prison.

Following a subsequent restitution hearing, defendant was ordered to pay \$14,032.63 in restitution. Defendant's sole contention on appeal is that the trial court abused its discretion in ordering restitution for economic losses that were not caused by defendant's convicted criminal conduct and, therefore, the matter must be remanded for a new restitution hearing. We reject this contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND²

A. *Factual Background*

On April 2, 2011, San Bernardino County Sheriff Deputies Jayne and Halterman were dispatched to Fisher Cattle Company near Barstow in regard to a grand theft, where they met with ranch foreman Harold Horner. Mr. Horner reported that between March 19 and April 2, 2011, unknown suspects cut a barbed wire fence and drove onto the property with a truck and trailer. Mr. Horner also noticed that another fence, located on the other side of the property, had been damaged, and that numerous items were missing from the property. The suspects stole: (1) approximately 70 twenty-foot long pieces of irrigation

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The factual background is taken from the sheriff's report.

pipe; (2) 15 five-inch pieces of well casing pipe (one with a gate valve) that were 15 feet long; (3) six feed troughs; (4) two large homemade steel gates; (5) 40 three-inch pieces of irrigation pipe; (6) one 250 gallon diesel tank; and (7) numerous turn buckles, brass fittings, and clamps. Mr. Horner further discovered that the radiator to the generator was cut, along with the wiring that went from the generator to the well pump, which pumps water to troughs for the cattle. He estimated the loss at approximately \$10,000.

Mr. Horner further told the deputies that a witness had seen a red truck and trailer the previous day, on April 1, 2011, traveling at a high rate of speed with items falling off the trailer. Some of the turn buckles and clamps had fallen off, as well as a couple of pieces of pipe. The witness confirmed this information to Deputy Jayne. Additionally, the witness said that the trailer had orange straps, and that he had to pull over to the side of the road to allow the speeding truck to pass. The witness also stated that he had collected the items that had fallen from the trailer and returned them to Mr. Horner.

A second witness told Deputy Halterman that on April 1, 2011, he saw a red Ranger truck pulling a trailer with two white males in their late 20's to early 30's inside the truck's cab. The witness saw items in the back of the truck, which were sticking up over the bed of the truck. Additionally, the witness saw a red "jack box" and at least six irrigation pipes in the trailer.

A few days later, on April 4, 2011, the deputies found cut irrigation pipes, several saws with metal cutting blades, and a large trailer with orange straps at defendant's residence. Mr. Horner met the deputies at defendant's residence and identified the pipes,

the diesel fuel tank, and the copper tubing system as the stolen items. After identifying the property, Mr. Horner retrieved the stolen items and placed them in his truck.

Defendant was subsequently arrested. When he was informed that the charges were for stolen property, defendant stated, “I don’t know what would be stolen. Irrigation pipes? Is that what you’re worried about?” Defendant then said his friend brought them to his residence, but when asked to elaborate, defendant said, “I didn’t get, uh, I’m not gonna get anyone else involved in this. Nevermind.” Defendant also asserted that he had no recollection of where the diesel tank came from, that he was “set up,” and that he wanted to invoke his right to “remain silent.”

B. *Procedural Background*

Defendant pled guilty to one count of receiving stolen property (§ 496, subd. (a)) and was sentenced to two years in state prison. Pursuant to section 1202.46, the trial court reserved the issue of victim restitution following a hearing.

At the restitution hearing, the People argued that defendant should be held accountable for all of the items for which restitution was sought. The restitution request did not include all the stolen items, but it did include items and labor necessary to repair the cattle ranch’s irrigation system. The sheriff’s report indicated that all of the stolen property was taken from the same location at the same time. The report also showed that an unidentified vehicle and male, who matched defendant’s description, were seen leaving the scene of the theft.

Defense counsel made several objections to the restitution request, including inconsistencies in the estimated value and amount of property stolen that was in the initial

report compared to the restitution request. Defense counsel also objected to the restitution request on the ground that it included all losses from the burglary, even though defendant was only charged with and convicted of receiving stolen property. The trial court thereafter recessed to allow counsel to further research the legal issue of whether defendant was liable for all the loss.

When the hearing resumed, over defense counsel's objections, the prosecutor presented evidence that on the day after the burglary, there were "drag marks where the trailer . . . had been dragged . . . along the road, and the drag marks were visible in the road." The prosecutor also stated that "pieces of [sucker pipe] could be seen [falling] off the trailer [on] the same route between the . . . ranch and the defendant's residence." The prosecutor further pointed out that pieces of the stolen gates, which had been cut, were located at local scrap yards; that additional pieces of the gates were found in the back of the trailer on defendant's property; and that metal cuttings and several saws with metal cutting blades were found near the trailer and inside defendant's residence.

Following argument, the trial court ordered defendant to pay the full amount of the restitution request. The court explained: "[I]n this case, . . . we're looking at the responsibility for the loss based on receiving[. We call it receiving stolen property, but it does cover more than receiving. It's possession, concealing, [and] could even include selling it to someone else. . . . [B]y concealing it from the owner and not either turning it into the police or to the owner, . . . it has caused ongoing issues with having to deal with not having the irrigation system because this is apparently an operating farm or ranch of some sort." The court further noted that a "restitution order does not have to be limited to

the exact amount of loss, which the defendant is actually found culpable[. As long as it's reasonably related to the damage and it's not arbitrary or capricious, then they usually stand." At the conclusion of the hearing, the court stated, "by providing a place for these items to be concealed and possibly . . . taken apart so that [the parts] cannot be identified, . . . [defendant] contributed to the loss, and that's the principle the court issues for making the order."

II

DISCUSSION

Defendant argues that the restitution order must be vacated and the matter remanded for a new restitution hearing because the trial court erred in failing to limit the economic losses that were caused by his conduct for which he was convicted. Specifically, he claims because he was not charged with burglary, but rather only with receiving stolen property, restitution should have been limited to the items found in his possession.

The trial court is required to award restitution to a victim who has suffered economic loss as a result of a defendant's conduct. (§ 1202.4, subd. (f); *People v. Giordano* (2007) 42 Cal.4th 644, 652 (*Giordano*)). The restitution order shall be "sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to . . . the following: [¶] (A) Full or partial payment for the value of stolen or 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); see also *Giordano*, at p. 654.) The restitution amount should be “based on the amount of loss claimed by the victim or victims or any other showing to the court.” (§ 1202.4, subd. (f).)

On appeal, we review the trial court’s restitution order for abuse of discretion. (*Giordano, supra*, 42 Cal.4th at p. 663.) We draw all reasonable inferences in favor of the court’s order and affirm if there is substantial evidence to support it. (*Id.* at p. 666.) The statute does not require “any particular kind of proof” and “[n]o abuse of discretion will be found where there is a rational and factual basis for the amount of restitution ordered.” (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542-1543 [Fourth Dist., Div. Two].)

As defendant points out, for a defendant sentenced to prison, “[c]ourts have interpreted section 1202.4 as limiting restitution awards to those losses arising out of the criminal activity that formed the basis of the conviction.” (*People v. Woods* (2008) 161 Cal.App.4th 1045, 1049; see also *People v. Lai* (2006) 138 Cal.App.4th 1227, 1247 [construing “criminal conduct” language in § 1202.4, subd. (f)].) California has “adopted the ‘substantial factor’ test in analyzing proximate cause.” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1321 (*Holmberg*); see also *People v. Jones* (2010) 187 Cal.App.4th 418, 425 [there is “no reason why the various principles involved in determining proximate causation . . . should not also apply in awarding victim restitution”].) This standard is ““‘relatively broad’” and requires ““‘only that the contribution of the individual cause be more than negligible or theoretical.’”” (*Holmberg*, at p. 1321.) A force that plays only a theoretical or infinitesimal part of

causing an injury or loss is not a substantial factor, but a minor force that causes harm or loss is a substantial factor. (*Id.* at p. 1322.)

In *Holmberg*, the defendant pled to possession of stolen property and was ordered to pay restitution to the owners of the property. The defendant argued that the restitution award was improper because the victim's losses were caused by the burglary and theft of the property and not by his mere possession. (*Holmberg, supra*, 195 Cal.App.4th at pp. 1313, 1320, 1323.) The reviewing court rejected this argument, noting "there can be more than one cause of injury and that multiple causes can combine to cause harm." (*Id.* at p. 1322.) The court found it "significant" that the defendant obtained the property the day it was stolen. (*Ibid.*) Because he did not turn it over to the police, the "[d]efendant's conduct played far more than a negligible or theoretical part in bringing about the victims' injuries and was a substantial factor in causing the harm they suffered." (*Ibid.*)

Likewise, defendant's conduct here was a substantial factor in causing harm to the cattle ranch. Although defendant denied burglarizing the ranch, the evidence shows that defendant's conduct was a "concurrent cause" of the total loss due to the burglary, and "a substantial factor in depriving" the ranch of a working irrigation system. (*Holmberg, supra*, 195 Cal.App.4th at p. 1322.) The evidence showed that when the deputies searched defendant's residence two to three days after the burglary, they discovered items that Mr. Horner had reported stolen and were part of the cattle ranch's irrigation system. All of the stolen items were taken from the same site. In addition, a trailer matching the one found at defendant's residence was seen leaving the area of the cattle ranch, at a high

rate of speed, with various items falling off the trailer, on the same day (or the day before) the items were discovered stolen. Further, restitution was requested for the items found at defendant's residence. The remaining restitution was ordered to repair the damaged irrigation system. Moreover, there was evidence showing that defendant was concealing the property, or cutting it up and selling it, thereby causing ongoing issues with the cattle ranch in not having an irrigation system. As the court in *Holmberg* found: "For these reasons, we conclude that defendant's concealing of the stolen property was a concurrent cause in depriving the victims of the use of their property. . . . Defendant's conduct played far more than a negligible or theoretical part in bringing about the victims' injuries and was a substantial factor in causing the harm they suffered." (*Holmberg*, at p. 1322.)

Defendant relies upon *People v. Scroggins* (1987) 191 Cal.App.3d 502 (*Scroggins*), but *Scroggins* is distinguishable. In *Scroggins*, burglaries occurred in four apartment units of the same complex. The defendant was charged and convicted of receiving some stolen property, which was found in his sister's apartment, where he was residing at the time of the burglaries. Those items of property were recovered by the police and returned to the rightful owners. The defendant was never charged with or found to be criminally responsible for the burglaries. Yet, the trial court ordered him to pay restitution for the property still not recovered from the burglaries. The appellate court found that the trial court erred in ordering the defendant to pay restitution to burglary victims whose losses were not connected to the defendant's crime. The

appellate court noted that the trial court “did not conclude . . . that [the defendant] was responsible for [the] other losses that it ordered paid.” (*Id.* at pp. 504-506.)

Unlike *Scroggins*, in this case, there was ample evidence of a causal connection between the losses incurred by the cattle ranch and defendant’s conduct. In *Scroggins*, items were taken from residents living in four separate apartment units, and there was no evidence connecting those losses to each other or to the defendant’s crime. (*Scroggins*, *supra*, 191 Cal.App.3d at p. 504.) In contrast, the property in the instant case was taken from only one site, the cattle ranch, and found at defendant’s residence several days after the burglary. Further, a trailer seen transporting the stolen items was also discovered at defendant’s residence. Moreover, the trial court here concluded that defendant contributed to the total amount of losses “by providing a place for these items to be concealed and possibly . . . taken apart so that they cannot be identified.” The stolen items found at defendant’s residence were clearly related to unrecovered items that had been stolen from the cattle ranch during the same burglary.

Thus, the trial court properly concluded that the record supported a finding that defendant was responsible for the other losses, and that there was a rational and factual basis for the amount of restitution ordered.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

KING
J.