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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.

JEFFERY WARREN ASHTON, SR.,

Defendant and Appellant.

E059462

(Super.Ct.No. FWV902930)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Sachs, Judge. Affirmed.

James R. Bostwick, Jr., 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, Meagan J. Beale and Heather F. Crawford, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jeffrey Warren Ashton, Sr., and his codefendant Doreen M.<sup>1</sup> were charged by amended information with theft from an elder or dependent adult (Pen. Code<sup>2</sup>, § 368, subd. (d), count 1), elder or dependent adult abuse (§ 368, subd. (b)(1), counts 2 & 3) and attempted theft from an elder or dependent adult (§§ 664/368, subd. (d), count 4). Pursuant to a plea agreement, defendant pled no contest to count 1. In exchange, the district attorney agreed to dismiss the remaining charges and have him placed on probation for five years. The plea agreement also specified that defendant would be jointly and severally liable to pay full victim restitution.<sup>3</sup> Following a restitution hearing, the trial court ordered victim restitution in the amount of \$75,838.

On appeal, defendant challenges the portion of the victim restitution order in the amount of \$13,850, which was awarded for costs associated with bail bonds and the subsequent lien on the victim's residence. He claims that the court abused its discretion in ordering him to pay this portion of the restitution award. We affirm the order.

#### FACTUAL AND PROCEDURAL BACKGROUND

Defendant and Doreen M. began dating at the end of 2006. Some time after that, defendant moved into the home of Doreen M.'s mother, Edna M. (the victim), who was approximately 77 years old. Due to her physical limitations, the victim was dependent on their care for every aspect of her life. The victim suffered from ataxia and was

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<sup>1</sup> Doreen M. is not a party to this appeal.

<sup>2</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

<sup>3</sup> Doreen M. also entered a plea agreement and pled guilty to count 1.

bedridden. She had no dexterity in her fingers, so it was difficult for her to hold a pen or dial a telephone. She also was unable to articulate words. Doreen M. had power of attorney for the victim.

In April 2009, Doreen M. hired Brandy C. to take care of the victim. Doreen M. subsequently failed to return home. Approximately two weeks later, Brandy C. discovered that Doreen M. and defendant had been arrested on narcotics charges. Doreen M. was incarcerated for approximately 30 days. After she was released, she occasionally visited her mother at the residence. Doreen M. refused to care for her mother and abandoned her duties as legal caretaker.

In August 2009, Brandy C. contacted the police to report elder abuse. She received a phone call from a bail bondsman who advised her that Doreen M. had used her power of attorney to put up the victim's residence as collateral for her bail bond. The bondsman called to collect on the victim's asset after discovering that Doreen M. was again in custody. Brandy C. also discovered documentation in Doreen M.'s truck indicating that Doreen M. had been selling the victim's assets and withdrawing money from various accounts belonging to the victim. Subsequently, a police detective interviewed Doreen M., and she stated that she had used the victim's residence as collateral for defendant's bail, as well as her own.

The police investigated the victim's finances further and discovered that, over a period of about 17 months, defendant and Doreen M. had collaborated to defraud the victim out of thousands of dollars. Defendant did some plumbing work for the victim. Doreen M. accessed money from the victim's IRA account to pay defendant's business

for unnecessary and overbilled work. The victim suffered a financial loss of about \$63,000, as a result. Furthermore, the victim's Discover credit card was charged without her knowledge or consent, in excess of \$10,000. The card was used to obtain cash advances, to pay for a hotel room shared by defendant and Doreen M., and to buy gasoline and smoke shop items. Defendant and Doreen M. also went to a cemetery broker and sold the victim's cemetery plot.

Defendant and Doreen C. were both arrested and charged with theft from an elder or dependent adult (§ 368, subd. (d)), elder or dependent adult abuse (§ 368, subd. (b)(1)), and attempted theft from an elder or dependent adult (§§ 664/368, subd. (d)). Both defendant and Doreen M. entered plea agreements and pled no contest to one count of theft from an elder or dependent adult (§ 368, subd. (d)). Defendant's plea agreement specified that he agreed to be jointly and severally liable for full restitution to the victim. Before taking his plea at the plea hearing, the court reviewed defendant's rights and the terms of the plea agreement with him. The court specifically stated that he was "going to be required to pay restitution, full restitution." The court stated, "Restitution will be joint and several, which means both you and [Doreen M.] are responsible for it; but if one of you doesn't pay it, the other one is 100 percent responsible for the whole." Defendant said that he did not understand the restitution payment, so the court again explained the meaning of the payment being joint and several. Defendant then acknowledged that he understood. The court asked if he wanted to proceed. Defendant replied that he did not know he would owe the total amount if Doreen M. did not pay, and stated that he thought she would be responsible for "what

they're saying she did . . . ." Defendant asked if it could be "50/50," and the court said no. The court reiterated that restitution would be joint and several and asked if defendant still wanted to proceed with the plea. Defendant said he did, and his counsel confirmed. Defendant then pled no contest to count 1. The parties agreed that he would be sentenced, and the fees and fines would be imposed, at a later date. The court referred the matter to the probation department for a probation report.

The probation officer's report recommended victim restitution in the amount of \$207,743. Defendant filed a restitution memorandum that asserted he did not feel he owed any money in restitution. The court held a restitution hearing on June 26, 2013, and heard testimony from Doreen M. After considering the evidence, which included probation reports, police reports, and defendant's deposition, the court ordered restitution in the amount of \$75,838, to be joint and several. This restitution amount included \$13,850 for "cost[s] associated with Bail Bonds and subsequent lien of victim's residence."

### ANALYSIS

#### The Court's Restitution Order Was Proper

Defendant argues that the trial court abused its discretion in ordering joint and several liability for the victim's loss of \$13,850 on the bail bond(s), which resulted in a lien being placed on the victim's residence. He contends that Doreen M. used the victim's residence as collateral for her bail bond only, but not for his bond. Thus, he asserts there was insufficient evidence that he shared criminal responsibility with Doreen

M. for the victim's loss of the \$13,850. We conclude that the court properly ordered defendant to be jointly and severally liable for such amount.

*A. Standard of Review*

A trial court's restitution order is reviewed for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.) "'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.]" (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.)

"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.] 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. [Citations.]" (*People v. Baker* (2005) 126 Cal.App.4th 463, 468-469 (*Baker*)).

*B. There Was Sufficient Evidence*

Defendant argues there was no evidence that any of the victim's money was used to pay his bail bond premium and, thus, the court abused its discretion in ordering him to

pay restitution for a loss that he did not cause or benefit from. Contrary to defendant's contention, the police report indicated that Doreen M. confirmed with the police detective that she used the victim's residence as collateral for bail bonds for both her and defendant. The bail bondsman also told police that he took both Doreen M. and defendant into custody when their bonds were revoked.

Defendant contends that the statements made in the police report were unreliable hearsay. However, the police report was admissible under the hearsay exception for official public records. (See *Donley v. Davi* (2009) 180 Cal.App.4th 447, 461.) Evidence Code section 1280 provides: "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies: [¶] (a) The writing was made by and within the scope of duty of a public employee. [¶] (b) The writing was made at or near the time of the act, condition, or event. [¶] (c) The sources of information and method and time of preparation were such as to indicate its trustworthiness." Although there is no indication in the record as to exactly when Doreen used the victim's residence as collateral for the bail bonds, she did admit to doing so when the police interviewed her at the start of the investigation. Moreover, the police report was made within the scope of duty of the police detective, and there was no apparent reason to question its trustworthiness.

Defendant points out that the evidence actually showed that Doreen M. secured her bail bond *only* with the collateral of the victim's residence. We acknowledge that, contrary to what she told the police, Doreen M. testified at the restitution hearing that she

pledged the victim's home as collateral to make bail for herself only, and that defendant's bail was paid by his attorney. However, on appeal, we determine “““whether there is any substantial evidence, *contradicted or uncontradicted*,” to support the trial court's findings.’ [Citations.]” (*Baker, supra*, 126 Cal.App.4th at pp. 468-469, italics added.) In other words, “the judgment may not be overturned when the circumstances might also reasonably support a contrary finding.” (*Id.* at p. 469.) We conclude that there was substantial evidence before the court to determine, by a preponderance of the evidence, that the victim's residence was used as collateral for bail bonds for both defendant and Doreen M.

### *C. Defendant Agreed to Joint and Several Liability*

The record here clearly demonstrates that the parties discussed the issue of victim restitution and came to an agreement that the court should order joint and several liability for full restitution. As part of his plea agreement, defendant agreed to joint and several liability with Doreen M. for victim restitution. Under joint and several liability, each party whose wrongdoing was a cause of an injury is liable for *all* of the plaintiff's damages. (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1156.) In his reply brief, defendant claims that he only agreed to be jointly and severally liable for the victim's losses that he caused. Thus, since he allegedly did not cause the victim's loss related to the bail bonds, the court erred in ordering him to be jointly and severally liable for that portion of the restitution award. However, not only did the plea agreement explicitly state that defendant would be jointly and severally liable for full restitution, the court specifically stated, at the plea hearing, that both defendant and Doreen M. would be responsible for

full restitution, and that if one did not pay it, the other would be responsible for the total amount. The court even gave defendant an example of payments made under joint and several liability. After defendant acknowledged that he understood, the court asked him if he still wanted to proceed with the plea agreement, under those terms. Defendant and his counsel confirmed that he wanted to proceed with the agreement. Defendant cannot now say that he does not want to pay for a certain portion of the restitution.

We conclude that, in light of the evidence before the court, as well as the express terms of defendant's plea agreement, the court did not abuse its discretion in ordering defendant to be jointly and severally liable for full victim restitution, including the \$13,850 portion related to costs associated with bail bonds and the subsequent lien on the victim's residence.

DISPOSITION

The order is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.