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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND CAMPOS,

Defendant and Appellant.

H036827

(Monterey County

Super. Ct. No. SS091166A)

1. INTRODUCTION

On appeal defendant Raymond Campos challenges a post-conviction victim restitution award of \$74,000.69, which includes \$22,286.01 in lost wages and \$51,714.68 in medical expenses.¹ He claims the evidence is insufficient to support the award of medical expenses. For the reasons stated below, we will affirm the award.

2. TRIAL COURT PROCEEDINGS

There was evidence at trial that, on April 10, 2009, two members of the Monterey County Joint Gang Task Force attempted to contact defendant, a known Norteño, after watching him engage in two hand-to-hand transactions in the parking lot of a Salinas apartment complex. As defendant began to back out of the lot in his car, one of the officers pulled open the driver's door and told defendant to stop. Defendant ignored him and proceeded to back up. The open door of the moving car knocked the other officer,

¹ Defendant has separately appealed from his conviction in H035756.

Monterey County Deputy Sheriff Jesse Pinon, to the ground and dragged him for a few seconds. Pinon's injuries included lacerations from over his right eye to the back of his head, a hematoma on the back of his head, scrapes on his elbows and knees, and a fractured clavicle that had not healed by the time of trial in March 2010. Photographs of his injuries were in evidence. At the time of trial in March 2010, he was still getting headaches.

After a two-week jury trial, defendant was acquitted of a charge of a premeditated and deliberate attempt to murder Pinon (Pen. Code, §§ 664, 187, subd. (a))², but convicted of assaulting a peace officer with a deadly weapon (§ 245, subd. (c)) and personally inflicting great bodily injury (§ 12022.7, subd. (a)), possessing methamphetamine for sale (Health & Saf. Code, § 11378) and selling or furnishing it (Health & Saf. Code, § 11379), all for the benefit of or in association with a criminal street gang (§ 186.22, subd. (b)(1)), in addition to active participation in a gang (§ 186.22, subd. (a)). In separate proceedings, the court found true that defendant had a prior serious felony conviction (§§ 667, subd. (a)(1), 1170.12, subd. (c)(1)) of possessing methamphetamine for sale (Health & Saf. Code, § 11370.2, subd. (c)) for which he had served a prior prison term (§ 667.5, subd. (a)). On June 18, 2010, in addition to sentencing defendant to prison for 34 years, the court imposed several fees and fines. The court also ordered defendant "to pay restitution to Jesse Pinon and/or the County of Monterey, the risk management, in an amount to be determined by the Court and in a manner to be determined by the California Department of Corrections and Rehabilitation."

A hearing on this topic was held on March 17, 2011. The sole witness was Lucy Raney, a Senior Resident Benefits Analyst for the Monterey County Risk Management Office. Monterey County is self-insured for workers' compensation. A third party,

² Unspecified section references are to the Penal Code.

Liberty Mutual, reviews the medical bills to the County and pays them from an account funded by the County. While Liberty Mutual is also an insurance company, it does not provide insurance to the County. The County does not separately review the bills. Raney reviews the County's payments and the adjuster's notes for the County.

In evidence was a nine-page document supplied by Raney reflecting medical payments between April 22, 2009, and October 8, 2010. Over a hearsay objection, Raney testified that Monterey County had paid \$51,714.68 for the total medical expenses of Deputy Pinon to date, and that further medical work and bills were anticipated. Defense counsel questioned why the cost of one item, \$35,557.40 for a medical air evacuation, was broken into two amounts. Raney said that was just due to how it was coded. Monterey County had also paid Pinon \$22,286.01 to make up for lost wages.

At the close of that hearing, defendant argued that the evidence did not justify any award, as the witness was "testifying from some third, possibly fourth party sources." Also, insurance was paying it off. The court gave defense counsel an opportunity to review the documentation that had been presented.

At a subsequent hearing on April 8, 2011, defense counsel explained that he had obtained some clarification from Raney meanwhile and was not going to call her back as a witness. "And so I'm going to submit it on the testimony from the hearing and – but continue to object that the County and the insurance companies are not victims and – in this case." The court made the award described above, saying, "It is the old collateral source rule."

3. THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

People v. Giordano (2007) 42 Cal.4th 644 (*Giordano*) explained: "In 1982, California voters passed Proposition 8, also known as The Victims' Bill of Rights. At the time this initiative was passed, victims had some access to compensation through the Restitution Fund, and trial courts had discretion to impose restitution as a condition of probation. [Citations.] Proposition 8 established the right of crime victims to receive

restitution directly ‘from the persons convicted of the crimes for losses they suffer.’ (Cal. Const., art. I, § 28, subd. (b).) The initiative added article I, section 28, subdivision (b) to the California Constitution: ‘It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. [¶] Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.’” (*Id.* at p. 652.)

“The Legislature has enacted a statutory scheme that implements the broad mandate of California Constitution, article I, section 28, subdivision (b). Penal Code section 1202.4 begins: ‘It is the intent of the Legislature that a victim of a crime who incurs *any economic loss* as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.’ (*Id.*, subd. (a)(1), italics added.) It requires also that the restitution order ‘shall be of a dollar amount that is sufficient to *fully* reimburse the victim or victims for *every* determined economic loss incurred as the result of the defendant’s criminal conduct’ (*Id.*, subd. (f)(3), italics added.) Additionally, ‘[t]he court shall order *full restitution* unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.’ (*Id.*, subd. (g), italics added.) [¶] The Legislature has supplied one limitation to the scope of losses that must be included in a restitution order that is not expressly included in California Constitution, article I, section 28, subdivision (b). That is, it has limited restitution orders primarily to ‘*economic loss[es]*.’ (Pen. Code, § 1202.4, subs. (a), (f), italics added.)” (*Giordano, supra*, 42 Cal.4th at p. 656.)

A victim’s medical expenses are recognized by statute as among the economic losses that may result from the commission of a crime. (§ 1202.4, subd. (f)(3)(B).) It is the injured individual and not his medical provider or insurer who is regarded as the

“direct victim of a crime” within the meaning of section 1202.4. subdivision (k)(2).³ In calculating the victim’s loss resulting from the defendant’s criminal conduct, courts disregard any payments towards that loss received by the victim from the victim’s insurer or another third party. (*People v. Birkett* (1999) 21 Cal.4th 226, 246; *People v. Slattery* (2008) 167 Cal.App.4th 1091, 1096-1097; *People v. Vasquez* (2010) 190 Cal.App.4th 1126, 1133-1134.) However, payments from the defendant’s insurer are regarded as payments by the defendant. (*People v. Bernal* (2002) 101 Cal.App.4th 155, 167-168; *People v. Jennings* (2005) 128 Cal.App.4th 42, 58-59.)

4. THE STANDARD OF REVIEW

In the trial court, “[t]he burden is on the party seeking restitution to provide an adequate factual basis for the claim.” (*Giordano, supra*, 42 Cal.4th at p. 664.) This court has previously observed that “[t]he standard of proof at a restitution hearing is preponderance of the evidence, not [beyond a] reasonable doubt.” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1319.) In terms reminiscent of summary judgment motions, it has been said that once the People make “a prima facie showing,” the burden shifts to the defendant to show a claimed amount is not recoverable. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 886-887; *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543; *People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1172; *People v. Taylor* (2011) 197 Cal.App.4th 757, 761; cf. *People v. Holmberg, supra*, 195 Cal.App.4th at p. 1320.)

On appeal we review a victim restitution award for abuse of discretion. (*Giordano, supra*, 42 Cal. 4th at p. 663.) As this court has observed, however, “No court has discretion to make an order not authorized by law, or to find facts for which there is not substantial evidence.” (*In re K.F.* (2009) 173 Cal.App.4th 655, 661; cf. *People v.*

³ Victim restitution may be awarded directly to a hospital as a condition of probation under section 1203.1, as probation conditions are not limited by the definition of “victim” in section 1202.4, subdivision (k). (*People v. Anderson* (2010) 50 Cal.4th 19, 31.) The award in our case was not a condition of probation.

Thygesen (1999) 69 Cal.App.4th 988, 993 [“If there is no substantial evidence to support the award, and assuming no other rational explanation, the trial court will have obviously abused its discretion.”].) The familiar standard of review applies when an appellant claims that a victim restitution award is unsupported by substantial evidence. (*In re K.F.*, *supra*, at pp. 661-662; *People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

5. THE VALIDITY OF THE RESTITUTION AWARD FOR MEDICAL EXPENSES

On appeal defendant does not renew his argument that Deputy Pinon’s loss should be reduced because workers’ compensation insurance has covered Pinon’s medical expenses. On appeal he asserts that “the prosecution failed to adduce substantial evidence of true economic loss based on actual medical bills, requiring reversal of the medical expense portion of the restitution order.” “Where the county did not even have *access* to the billing, the bare fact the county paid these items simply does not supply the relevant underlying billing or benefits information to meet the defense objections here.” “The defense objections were not limited to hearsay, but also included lack of foundation.” Defendant’s appellate “claims are not necessarily limited to hearsay or mistaken double billing.”⁴ Rather, “routine exorbitant medical billing amounts in excess

⁴ Defendant disputes the Attorney General’s claim that he waived his hearsay objections at the renewed hearing. However, we do not understand the thrust of defendant’s appellate claim to be that the award was based on inadmissible hearsay, but rather that, hearsay or not, the medical expenses are inadequately documented.

This court has recognized that “California cases have held computer printouts admissible when they fit within a hearsay exception as business records [citation] or official records [citation].” (*People v. Hawkins* (2002) 98 Cal.App.4th 1428, 1448.)

Insofar as a medical bill purports to summarize services performed by medical personnel, it is clearly hearsay. (See *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, 626; *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 42-43 [“Since invoices, bills, and receipts for repairs are hearsay, they are inadmissible independently to prove that liability for the repairs was incurred, that payment was made, or that the charges were reasonable.”].) However, invoices and bills

(Continued)

of what the provider would accept as payment must be scrutinized in the context of criminal restitution awards.”

A number of published cases have considered the connection between medical bills and an injured victim’s actual economic loss. Recognizing that medical bills routinely exceed what the service provider will accept as payment, appellate courts have upheld trial court awards reflecting the amounts paid for medical services, rather than the amounts billed, as the victim’s actual loss. (*People v. Bergin* (2008) 167 Cal.App.4th 1166, 1172; *People v. Millard*, *supra*, 175 Cal.App.4th a pp. 28-29.)

In *People v. Duong* (2010) 180 Cal.App.4th 1533 (*Duong*), on which defendant relies, the People appealed after the trial court declined to award an assault victim anything for the costs of her treatment at Kaiser Hospital. The trial court found that while Kaiser had billed the victim a total of \$4,459, she had not as yet incurred any medical expenses beyond her monthly membership fees. (*Id.* at p. 1536.) The appellate court concluded: “Even though Ruggiero was not obligated to pay any amount above her membership fees in the health plan for the services she received, charges were incurred on her behalf as a result of defendant’s criminal conduct. In the absence of ‘compelling and extraordinary reasons for not doing so’ (§ 1202.4, subd. (f)), which the trial court did not find and defendant never suggested, the court is required to order the defendant to pay restitution for those charges.” (*Duong*, *supra*, at p. 1539.)

The appellate court further concluded that it would be enough to award the victim what Kaiser was willing to accept, not its total charges. “In the present case, the record

are admissible for the limited purpose of corroborating testimony that a liability was incurred or discharged (*ibid.*), even when they are not otherwise admissible as official or business records. Here the witness testified that the document reflected the medical charges actually paid by the County due to its employee’s injuries.

In any event, a victim restitution award can be based on reliable hearsay. (*People v. Cain* (2000) 82 Cal.App.4th 81, 87-88 [reimbursement of victim of domestic violence under § 273.5, subd. (h)(2).])

also includes evidence that the amount of Kaiser’s lien for the services rendered Ruggiero, and presumably the amount Kaiser will accept as full payment for those services, is \$1,538.20. In the absence of any other evidence on this issue, it appears that any sum in excess of that amount for the services rendered by Kaiser Hospital would exceed the expense that the victim or anyone on her behalf could possibly incur as a result of defendant’s offense, and would exceed the amount of restitution authorized by section 1202.4. [¶] Therefore, the trial court abused its discretion in failing to order defendant to pay restitution to Ruggiero for the amount that Kaiser Hospital will accept as full payment for the medical services Ruggiero received at Kaiser Hospital, which the record indicates to be \$1,538.20.” (*Duong, supra*, 180 Cal.App.4th at p. 1540.)

Defendant also relies on *In re Eric S.* (2010) 183 Cal.App.4th 1560, which represents the other side of the *Duong* coin. In that case a juvenile appealed from a victim restitution award under Welfare & Institutions Code, section 730.6, subdivision (h) that included the full amount of Kaiser’s “Total Billed Charges,” \$40,311.85, even though there was evidence that Kaiser was willing to accept \$32,249.48. (*Id.* at p. 1563.) The appellate court agreed with the reasoning of *Duong*, and modified the order to include as the cost of medical services the amount Kaiser was willing to accept. (*Id.* at p. 1566.)

Defendant correctly reads *Duong* and *In re Eric S.* as reflecting judicial concern about basing victim restitution awards on inflated medical billings when a more accurate measure of the value of the services to the victim is available in the record. In each case, Healthcare Recoveries, “Kaiser’s collection agency” (*In re Eric S., supra*, 183 Cal.App.4th at p. 1563) did provide the district attorney with a written consolidated statement of benefits which listed individual amounts charged and billed and benefits provided. (*Ibid.*; *Duong, supra*, 180 Cal.App.4th at p. 1536.) However, contrary to defendant’s position, neither case indicated that the underlying bills, or even a statement

of benefits, is required to establish a victim's medical expenses. The sufficiency of the evidence was not an issue in either case.

Both cases did rely on parts of this court's decision in *In re K.F., supra*, 173 Cal.App.4th 655 (*Duong, supra*, 180 Cal.App.4th at pp. 1538-1539; *In re Eric S., supra*, 183 Cal.App.4th at p. 1565), which did directly consider the sufficiency of evidence of medical expenses. In that case also was evidence of a consolidated statement of benefits from Healthcare Recoveries listing the provided benefits and billed amounts. (*In re K.F., supra*, 173 Cal.App.4th at p. 663.) This court concluded that this document "constitutes substantial evidence that these charges were 'incurred' by the victim. Assuming it was not itself a bill, as defendant asserts, it was nonetheless evidence of billing. It could be reasonably viewed by the trial court as evidence that the victim had been billed for the amount stated." (*Ibid.*; cf. *People v. Hove* (1999) 76 Cal.App.4th 1266, 1274 [computer generated total of all claims for medical expenses was sufficient evidence of loss].)⁵

In *In re K.F.*, this court also considered another document offered by the People, "an 'Explanation of Benefits' from Kaiser." (*In re K.F., supra*, 173 Cal.App.4th at p. 664.) It listed an amount for ambulance charges, but also recited that it was "not a bill" and that the victim owed nothing. (*Ibid.*) This court stated "it is not substantial evidence that the victim *incurred* a debt or loss in [the stated] amount, or any amount." (*Ibid.*) We found no evidence in other documentation "that this was a determinable loss incurred by the victim" (*ibid.*) and accordingly ordered a reduction in the award by that amount. (*Id.* at p. 667.)

In this appeal, we understand defendant's essential argument to be that in order to establish the restitution due a crime victim for actual medical expenses under section

⁵ We note that in *In re K.F., supra*, 173 Cal.App.4th 655, unlike the later cases of *Duong, supra*, 180 Cal.App.4th 1533 and *In re Eric S., supra*, 183 Cal.App.4th 1560, there was no evidence of what amount less than the total billed charges Kaiser might be willing to accept as payments.

1202.4, the prosecution must provide at least a statement of benefits from the medical provider, if not the actual underlying bills. Defendant claims that his objections to the documentation offered were enough to shift the burden of production back to the prosecution as “it had better access to the underlying billing.”

The opinions on which defendant relies involved statements of benefits in evidence, but they did not require such a statement as a basis for an award. Those decisions made a different point, namely that a statement of benefits should not be accepted as establishing a victim’s actual expenses in the face of other evidence that the medical service providers are willing to accept less in full satisfaction of their claims. While there was evidence from the medical services provider in the records of those cases that the benefits statements may have been inflated, they did not purport to hold that all medical bills are excessive and inflated. Absent other evidence of what a medical service provider is willing to accept for services, the provider’s bill, coupled with the obligor’s testimony that the services were rendered, amounts to substantial evidence of the patient’s actual medical expenses.

In this case, in lieu of a compilation of medical bills or a comprehensive statement of benefits, the prosecution presented a compilation of what was actually paid by the County of Monterey for medical services provided to its employee, Deputy Pinon. When the victim has obtained insurance or other coverage of medical expenses, the amounts actually paid by the insurer or other third party on claims by medical service providers are even a better indicator of what the providers are willing to accept than a mere compilation of their original bills. Defendant produced no evidence either that any one of the listed amounts was not actually paid for medical treatment provided to Deputy Pinon as a result of defendant’s assault with a deadly weapon or that the amount paid exceeded what the provider was willing to accept. We conclude that there was substantial evidence supporting the trial court’s award of \$51,714.68 in medical expenses and that the trial court did not abuse its discretion.

6. DISPOSITION

The victim restitution award is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

DUFFY, J.*

*Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.