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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANGELO JORDAN,

Defendant and Appellant.

2d Crim. No. B283171
(Super. Ct. No. 1455041)
(Santa Barbara County)

Michael Angelo Jordan appeals a judgment and a victim restitution order in the amount of \$16,271.04 following his no contest plea to carjacking. (Pen. Code, § 215, subd. (a).) He also appeals a post-judgment order denying his motion to withdraw his plea. We conclude, among other things, that the trial court did not abuse its discretion in making the restitution order or in denying Jordan's motion to withdraw his plea. We affirm.

FACTS

In the early morning hours of January 1, 2015, Jordan and Jessica Garcia approached a man named Ramirez who was sitting in his car. Garcia asked Ramirez for a ride. She walked

to the passenger side and pointed a gun at Ramirez. Ramirez “tried to push the barrel of the gun away.” Jordan told Ramirez, “Don’t touch my girl.” Ramirez “exited the vehicle,” Garcia went to the driver’s seat, Jordan got into the passenger seat, and “they drove away” in Ramirez’s car. The police later recovered the stolen vehicle.

Jordan was arrested and charged with carjacking. He signed a plea agreement to plead no contest to carjacking and receive a seven-year prison sentence. That agreement provided that he would pay victim restitution in an amount to be determined.

Ramirez told police items of his property were “taken from within the vehicle.” He filed a claim for restitution for \$8,409.46. That claim included restitution for “items taken from within the vehicle” and for costs of “re-keying . . . his residence.”

The trial court held a restitution hearing. The People admitted into evidence a restitution packet showing Ramirez now claimed \$16,271.04 as damages as a result of the carjacking. Ramirez sought restitution for the costs of items taken in the carjacking and for damage to the body of the vehicle, including costs for body work to repair dents or “dings” to the car.

At the hearing Police Officer Erik Hesch testified Ramirez’s car was a 2006 “GMC Yukon SUV” with “approximately 157,670 miles on it.” The car was stolen around midnight and it was recovered at 5:30 p.m.

Jordan’s counsel argued the damage Ramirez claimed to the body of the vehicle could not have been caused by Jordan in only “17 and a half hours.”

The trial court found the restitution packet contained “documentation supporting” the claim for \$16,271.04 as

“restitution.” It said the defense position that the damage to the car occurred before it was stolen was “pure speculation.” It found the defense failed to present “any solid evidence” that the damages claimed “are not legitimate.”

Jordan filed a motion to withdraw his no contest plea. The People opposed it, claiming Jordan did not “show a good reason why it would be unfair to compel him to follow the deal he signed.” At the hearing on the motion, Jordan testified he was surprised by the size of the restitution award. He claimed that had he known it would be “\$17,000,” he would not have entered his no contest plea. The trial court denied the motion.

DISCUSSION

The Victim Restitution Order

Jordan contends the trial court “erred in ordering restitution for repair to the vehicle for ‘dings.’” (Capitalization omitted.) He claims the People failed to present evidence showing that he “caused any damage to the vehicle.”

“[D]irect victims of crime have a statutory right to restitution on the full amount of their losses” (*People v. Baker* (2005) 126 Cal.App.4th 463, 468.) “At a victim restitution hearing, a prima facie case for restitution is made by the People based in part on a victim’s testimony on, or other *claim or statement* of, the amount of his or her economic loss.” (*People v. Millard* (2009) 175 Cal.App.4th 7, 26, italics added.) “Once the victim has [i.e., the People have] made a prima facie showing of his or her loss, *the burden shifts to the defendant to demonstrate that the amount of the loss* is other than that claimed by the victim.” (*Ibid.*, italics added.) “The standard of review of a restitution order is abuse of discretion.” (*Ibid.*)

Here the trial court admitted into evidence the People's restitution packet. It included a statement showing a total amount for restitution as \$16,271.04. The court found the packet contained "documentation supporting" that amount. The prosecutor noted that part of the restitution amount was for "damage to the vehicle" that "was not there . . . prior to the car being stolen."

The trial court asked defense counsel, "[W]hat *evidence* does the defense have that the *damage claimed, documented by the estimates that are attached*, did not occur . . . ?" (Italics added.)

Counsel argued the vehicle was taken for "17 and a half hours"; it was old and had been driven more than 150,000 miles. He claimed the bumps in the car's body could not have occurred in that short period when the car was taken from Ramirez. But this was argument, not evidence. The trial court found the defense presented only "speculation" to challenge the documents showing repairs for damage to the car's body. It reasonably found Jordan did not meet his evidentiary burden. (*People v. Millard, supra*, 175 Cal.App.4th at p. 26.) Jordan has not shown an abuse of discretion. (*Ibid.*)

The Motion to Withdraw the No Contest Plea

Jordan contends the trial court erred by denying his motion to withdraw his no contest plea. He claims he "was surprised" by the \$16,271.04 restitution award. It was twice as much as an earlier estimate he knew about at the time he entered his plea.

"To establish good cause to withdraw a guilty plea, the defendant must show *by clear and convincing evidence* that he or she was operating under mistake, ignorance, or any other factor *overcoming the exercise of his or her free judgment*, including

inadvertence, fraud, or duress.” (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1416, italics added.) “The defendant must also show prejudice in that he or she would not have accepted the plea bargain had it not been for the mistake.” (*Ibid.*)

Jordan testified that had he known the restitution award would be \$17,000, he would not have signed the plea agreement. He would not have agreed to a seven-year prison term in that agreement.

But Jordan admitted he was facing a potential maximum term of “almost 30 years in state prison.” He knew when he entered his plea that he “had to pay restitution,” and he did not “know the amount.” Jordan’s credibility was a matter for the trial court to determine. (*People v. Jones* (1990) 51 Cal.3d 294, 314.) But it did not find his testimony to be credible.

In his plea agreement, Jordan acknowledged that 1) the trial court would decide the amount of restitution; 2) the amount was not fixed--it was “to be determined”; and 3) he had discussed this matter with his attorney. His attorney signed the plea form and said, “I have reviewed this form with my client. I have explained each of the items in this form”

The trial court could reasonably find that Jordan 1) knowingly and intelligently entered his plea on advice of counsel, 2) knew the amount of restitution had to be determined at a future hearing, and 3) obtained a significant “advantage” by “bargaining for a lesser” prison term. (*People v. Otterstein* (1987) 189 Cal.App.3d 1548, 1550-1551.) Jordan has not shown why the court could not reasonably find that his testimony was not sufficient to support his motion. (*People v. Jones, supra*, 51 Cal.3d at p. 314 [“it is the exclusive province of the trial judge . . . to determine the credibility of a witness”].)

DISPOSITION

The judgment and orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

James K. Voysey, Judge

Superior Court County of Santa Barbara

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, Esther P. Kim, Deputy Attorney General, for Plaintiff and Respondent.