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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY LEE KNIGHT,

Defendant and Appellant.

B271846

(Los Angeles County  
Super. Ct. No. TA137771)

APPEAL from an order of the Superior Court of Los Angeles County, John T. Doyle, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General and Analee J. Brodie, Deputy Attorney General, for Plaintiff and Respondent.

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The trial court ordered Jeffrey Lee Knight to pay \$2,162.45 in restitution to Khristy S. for damage to her car. Knight contends that the court abused its discretion by arbitrarily rejecting his alternate restitution plan and relying on a written repair estimate to fix the restitution amount. Because the restitution order was reasonably calculated to compensate the victim for her economic loss, we affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Knight pled no contest to making criminal threats against Jason S. (Pen. Code,<sup>1</sup> § 422, subd. (a)), stalking Khristy S. (§ 646.9, subd. (a)), and vandalism of Khristy S.'s car (§ 594, subd. (a)). Knight was sentenced to three years and eight months in prison.

Subsequently, the court held a restitution hearing to determine the amount Knight owed to Khristy S. for his vandalism of her car. At the hearing, Khristy S. provided a receipt for \$220 to replace her car's rear window and a written estimate from Olympic Auto Center totaling the cost of body repairs to be \$1,560.45. Khristy S. had not had the body repairs done yet because she could not afford the cost. Khristy S. also testified to \$382 in lost wages from her time spent in court.

Knight contested the Olympic Auto Center estimate. He testified that he had a friend who owned a body shop who would repair Khristy S.'s car on credit for Knight to pay once he was released from jail. After both parties' testimony, the court ordered restitution in the amount of \$2,162.45—the sum of the Olympic

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

Auto Center estimate, the amount Khristy S. had paid to replace her window, and her lost wages.

## DISCUSSION

Victim restitution awards are governed by Section 1202.4, which provides in relevant part: “(f) . . . [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 or victims in an amount established by court order, based on the amount of loss claimed by the victim . . . or any other showing to the court. [¶] . . . [¶] (3) To the extent possible, 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, including, but not limited to, all of 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.”

A victim’s right to restitution is broadly and liberally construed. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.) “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.” (*Ibid.*) Once the prima facie showing has been made, “the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim.” (*Ibid.*)

We review restitution orders for an abuse of discretion. (*In re Travis J.* (2013) 222 Cal.App.4th 187, 202.) The trial court may use any rational method to fix the amount of restitution as

long as it is reasonably calculated to make the victim whole and is not “arbitrary or capricious.” (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1382.) A reviewing court will not find an abuse of discretion so long as there exists a “factual and rational basis for the amount of restitution ordered by the trial court.” (*In re Travis J.*, at p. 202.) “Under the abuse of discretion standard, . . . it is irrelevant that there may be other reasonable ways of calculating” a restitution amount, so long as the chosen method is also reasonable. (*Akins*, at p. 1389.)

On appeal, Knight contests only the cost of body repairs for Khristy S.’s car. Knight contends that the written estimate is not proof of the actual cost to repair Khristy S.’s car because estimates can vary across different body shops. He also contends that the court abused its discretion by arbitrarily rejecting Knight’s alternative proposal to have his friend repair Khristy S.’s car on credit.<sup>2</sup>

The trial court did not abuse its discretion by relying on the written repair estimate to measure restitution. The written estimate demonstrates that repair of Khristy S.’s car is possible; as a result, Khristy S.’s economic loss is measured by the actual cost of repair. (§ 1202.4, subd. (f)(3)(A).) Olympic Auto Center prepared the estimate with the express purpose of calculating how much it would charge Khristy S. to repair her car. As such, the estimate is prima facie evidence of Khristy S.’s actual cost of repair. (See, e.g., *People v. Stanley* (2012) 54 Cal.4th 734, 738-739

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<sup>2</sup> Knight makes several arguments in both his opening and reply briefs suggesting prejudicial misconduct by the court, but there is nothing in the record to suggest Knight was denied a fair hearing by an impartial judge.

[affirming a restitution order based on a written car repair estimate].)

Knight's speculation as to the existence of varying estimates from other body shops is irrelevant. The trial court had broad discretion to use any rational method to determine the restitution amount as long as it was reasonably calculated to make the victim whole. (*People v. Hove* (1999) 76 Cal.App.4th 1266, 1274.) Knight relies on *In re Travis J.*, *supra*, 222 Cal.App.4th 187, where the Court of Appeal reversed a restitution order based on a trial judge's own "reasonable estimate" of the cost of a new tire. (*Id.* at p. 203-204.) The victim had provided no receipts or estimates. (*Ibid.*) Knight's restitution order, in contrast, is based on evidence submitted to the court, not the court's speculation. Here, the written estimate provided a "factual and rational basis" for the ordered amount. (*Id.* at p. 202.)

Knight presented no evidence to the trial court showing the written estimate was inaccurate or unreliable. Absent such evidence, the court did not abuse its discretion in relying upon the estimate to calculate restitution. This is unlike *People v. Chappelone* (2010) 183 Cal.App.4th 1159, on which Knight also relies, where a trial court's restitution order awarded a retailer the last retail price of stolen merchandise. (*Id.* at p. 1173.) Both parties agreed the merchandise was in fact worth much less because it was damaged before the defendants stole it. (*Ibid.*) This undisputed discrepancy between the stolen merchandise's actual value and the value at which it had been measured to set restitution provided the retailer with a windfall gain; the Court of Appeal reversed. (*Ibid.*) Here, in contrast, there are no facts in the record to prove that the written estimate does not reflect Khristy S.'s actual cost of repair.

In fact, this case is much less extreme than *People v. Stanley, supra*, 54 Cal.4th 734, in which our Supreme Court affirmed a restitution award based on a written estimate for repair costs over three times as much as the victim originally paid for her car. (*Id.* at p. 739.) The Supreme Court agreed with the Court of Appeal’s reasoning that an order of the necessary repair costs for the victim to “have her truck back in the same condition it was before the defendant vandalized it . . . comports with the spirit” of Section 1202.4. (*Ibid.*) Under this precedent, the trial court’s reliance upon the written estimate was a reasonable discretionary effort to fix a restitution amount that would compensate Khristy S. for her repair costs.

The court did not abuse its discretion in choosing not to base restitution on Knight’s alternative proposal because its chosen method of determining economic loss was not “arbitrary or capricious.” (*People v. Akins, supra*, 128 Cal.App.4th at p. 1382.) The court’s decision not to adopt Knight’s proposal was not arbitrary because the court could rationally decide it would be unreasonable to order Khristy S. to conduct business with friends of the man convicted of stalking her and vandalizing her car. However, even if Knight’s alternative proposal were considered reasonable, it is not an abuse of discretion to choose one reasonable way to calculate restitution over another. (*Id.* at p. 1389.) The written estimate was a reasonable method by which to fix restitution and the court did not abuse its discretion by basing its restitution order upon the estimate’s amount.

## DISPOSITION

The restitution order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

MENETREZ, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.