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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SHAWN CORNELL, Defendant and Appellant.	B240805 (Los Angeles County Super. Ct. No. PA071727)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel B. Feldstern, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Shawn Cornell pled no contest to one count of grand theft of personal property (Pen. Code, § 487, subd. (a)).[1] The trial court sentenced Cornell to two years in county jail (§ 1170, subd. (h)(1) & (2)), with credit for 28 days served, and ordered him to pay $72,340 in restitution to the victim (§ 1202.4, subd. (f)).[2] Based on the amount of restitution ordered, Cornell appealed. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*.[3]

On September 23, 2011 and again on October 10, 2011, 26-year-old defendant and appellant, Shawn Cornell, visited a friend, Joseph, the son of the victim, Laurel Marchionda, at Marchionda's home. On at least one of these two occasions, Cornell and Joseph were playing darts and Cornell asked to go inside the house to use the bathroom. While he was inside, Cornell took jewelry originally estimated as worth $92,800 from jewelry boxes in the master bedroom. Cornell later stated that he pawned the jewelry at various shops to pay bills and to purchase drugs.

With regard to Cornell's "criminal history," as a juvenile, on June 5, 2001 he suffered a sustained petition for petty theft in violation of section 484, subdivision (a) and was placed at home on probation.

Of the $92,800 worth of stolen jewelry, Marchionda has recovered only $1,700 worth and her theft insurance will cover only an additional $3,300. Marchionda's

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

[2] Section 1202.4, subdivision (f), provides: "Except as provided in subdivisions (q) and (r), in 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 victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. . . ."

[3] The facts have been taken from the probation report.

insurance company had paid her $5,000, some of which she had used to buy back some very sentimental pieces of jewelry from " 'Kevin's Jewelers.' " Five thousand dollars ($5,000) is the maximum Marchionda's insurance policy will pay for stolen jewelry without "a separate jewelry policy."

2. *Procedural history*.

In an amended felony complaint filed on October 27, 2011, Cornell was charged in count 1 with first degree residential burglary (§ 459), a serious felony within the meaning of section 1192.7, subdivision (c). Count 2 alleged Cornell committed the crime of grand theft of personal property (§ 487, subd. (a)). It was further alleged with regard to count 2 that it is a serious or violent felony requiring registration pursuant to section 290, subdivision (c) and that custody time for the offense is generally to be served in state prison (§ 1170, subd. (h)(3)). In a third count, Cornell was charged with the misdemeanor of petty theft (§ 484, subd. (a)).

At proceedings held on November 1, 2011, Cornell waived his right to a preliminary hearing, a court trial and a jury trial. In addition, he waived his rights to confront and cross-examine witnesses, to subpoena witnesses to testify in his defense and his ability to exercise his privilege against self-incrimination.

After being advised of the nature of the charges against him and the "possible consequences of a plea of guilty or nolo contendere," Cornell decided to enter a plea of nolo contendere to count 2, grand theft of personal property (§ 487, subd. (a)). The trial court determined that there was a factual basis for the plea, accepted it and found Cornell guilty of the crime.

Cornell waived arraignment for judgment and agreed to be sentenced that day. The trial court then denied Cornell probation and sentenced him to the mid-term of two years, the time to be served in county jail (§ 1170, subd. (h)(1) & (2)). Cornell was given presentence custody credit for 28 days (14 days actually served and 14 days of good time/work time). In accordance with plea negotiations, the People's motion to dismiss counts 1 and 3 was granted pursuant to section 1385.

Cornell was ordered to pay a $40 court security assessment (§ 1465.8, subd. (a)(1)), a $30 criminal conviction assessment (Gov. Code, § 70373), a $200 restitution fine (§ 1202.4, subd. (b)), attorney fees in the amount of $129 (§ 987.8) and restitution to the victim pursuant to section 1202.4, subdivision (f), the amount of which was to be determined at a hearing to be held on the matter.

At a hearing held on March 2, 2012, the victim, Laurel Marchionda, testified that, prior to October 10, 2011, she owned a "large amount of jewelry." She kept the jewelry in two large "chest-type" jewelry boxes, one of which was in her bedroom and one of which was in a hallway in the upstairs portion of the house. Most of the jewelry had been gifts from her husband and others, some she had inherited from her parents and other pieces she had inherited from her mother-in-law. The jewelry was "fine jewelry," not costume jewelry, and was made of gold and precious stones. Many of the pieces she had owned for "30-plus" years.

Marchionda had taken some pieces of jewelry that she had been wearing when the others were stolen to a professional jeweler to get an estimate regarding their value. The jeweler at a store called " 'Ro, Ma Jewelers,' " estimated the value of a necklace alone as approximately $8,000.

Marchionda had made a list of jewelry taken based on her memory. She attempted to organize it by type of jewelry. She worked with the jeweler to determine the types and sizes of stones and the weights of various pieces. In addition, Marchionda knew that Cornell had pawned some pieces at stores called " 'Coins Plus' " and " 'Kevin's Jewelers.' " She was able to take photographs and make lists of some of those items and she purchased back six items from Kevin's Jewelers for $1,065. Subtracting the $5,000 that her insurance company was willing to pay, Marchionda determined she had lost $72,340 in jewelry. In making this determination, Marchionda had viewed pieces at the jewelry store which were similar to the ones which had been taken. The jeweler had then estimated their value based on the type and size of the stones and the amount of gold in the item. Because she had over 30 pieces, Marchionda had the jeweler assist her with several, then, based on what he had told her, "use[d] that to the best of [her] ability to

come up with the" value of the remaining items. In doing so, she relied on notes she had taken at the jewelry store.

Marchionda was able to purchase six items back from Kevin's Jewelers for $1,065. On another day, Marchionda went to Coins Plus with the investigating officer in the case, Detective Darland, who photographed several of the nine items Cornell had sold to that store. Although she had considered it, she was unable to purchase those pieces back when she first saw them because, at that time, she did not have the money.

At the time of the hearing, Marchionda, did not know if the pieces were still at the store. The owner was required to hold them for 30 days, but he had purchased them from Cornell in October or November. As the hearing was being held in March, it had been much more than 30 days. However, as of a couple of weeks before the hearing, the owner still had the jewelry and he had contacted Marchionda to determine what he should do with it. Marchionda had told the owner that she had decided that she was "not going to purchase [the pieces] back." Marchionda had made this decision in part because of the cost and in part because Coins Plus "only purchased gold." They had removed the stones from the rings and other pieces and were selling just the settings. So Marchionda and her husband decided not to spend "a thousand dollars to get back gold settings and various chains."

Marchionda had made two lists of the stolen jewelry. When she first reported the theft, the police had asked her to make a list of the items stolen and to place a value on it. Three days after the theft, Marchionda made a five-page list of approximately 58 pieces and indicated that the value of all the items, considered together, was approximately $92,800. Later, after speaking with the jeweler at the store, Marchionda revised the list. The second list is approximately three typed pages long and contains descriptions of approximately 35 pieces of fine jewelry.

The second list is more "descriptive" and "very detailed." Marchionda indicated that she is "very aware of jewelry" and "what it looks like and [what size it is]." She stated that she had a "pretty good memory for that type of thing." Each piece of jewelry on her list had a "story" and she could tell from whom she had received the piece and

"describe . . . exactly what [it] looked like." Marchionda then went down the list of jewelry which had been taken, described it and told the court how she had obtained it. For example, she described the second item on the list as a "ring, men's large, heavy, 14-carat gold ring with large onyx stone and one-quarter carat diamond." Marchionda indicated that the ring had been her father's and that her mother had had it made for him. Marchionda "wore it, after [her father] passed away . . . . It was very heavy, very large." Marchionda knew the approximate "size of the onyx [and that] [t]he quarter-carat diamond was . . . embedded in it with a ring of gold around it."

In placing a value on each piece of jewelry, Marchionda had "tried to be as fair as [she] could be." She "tried to take [the] emotion out of it because [she] thought that's not what this is about." She could not "ascribe emotional value [to each piece], so [she] tried to be as fair as [she] could be without being unfair to [herself]." She did not "overinflat[e] everything [she] put down." She took the "middle of the road."

At the bottom of the three-page list of items, Marchionda indicated that, to arrive at the estimated value of her jewelry, she "worked with a jeweler slash owner, Ramzi Azar, at 'Ro, Ma Jewelry.' " Azar had not given Marchionda written estimates regarding what various pieces of jewelry were worth, in part because, for example, there is "a wide discrepancy in the value of a diamond based on the color and the clarity" of the stone. When she made her list of pieces for the court, Marchionda did not have that information and "wouldn't feel comfortable stating that information because [she knew that it was] very specific." She did, however, know about some pieces. For example, she knew that the diamond in her mother's wedding ring "was of good clarity." In addition, she knew that her gold jewelry was 14-carat. She had only one piece that had been made of 18-carat gold.[4]

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[4] After determining the value of each piece of jewelry, Marchionda did not take the list "to a jeweler or anyone to try to confirm that [her] valuations were accurate." She showed the list to her husband, who believed that she had undervalued the jewelry. Although he had never worked in the jewelry trade, he had purchased a lot of it.

In order to determine the value of the gold jewelry, Marchionda had considered the size of the piece and whether it was hollow or solid, then used a formula the jeweler had given her as a gauge to go by. In helping to give her some kind of criteria, the jeweler had weighed the necklace Marchionda had been wearing at the time, told her that it weighed 100 grams and was worth approximately $8,000, since a gram of gold was worth approximately $85. Marchionda had asked the jeweler for assistance in valuing primarily "the larger items, the ones with diamonds and stones" because those were "more difficult to assess. Then [she] got a range of the smaller items . . . . [However, she] did not feel comfortable" taking any more of the jeweler's time. She "was there for a long time as it was." Marchionda believed that $72,340 was a fair request for restitution.

Defense counsel argued that "the problem here is, unfortunately, in the recordkeeping[.] [W]hen people buy jewelry from fine jewelers, . . . a higher quality jewelry, they are given the actual description in terms of cut and clarity of the stone in question and that is kept. [Marchionda] admitted on the stand that she couldn't tell you that, and that's a key component . . . in valuing jewelry . . . . [Defense counsel believed that,] [j]ust because [one] can eyeball something[,] . . . [she did not] think [that was] enough to meet the burden" of showing the value of the jewelry. She asserted that "the burden is on [the victim] by a preponderance of the evidence. . . . [I]f [one does not] have the records and [did not] keep the records, [one] may not be able to meet that burden." Defense counsel thought Marchionda's estimate of the value of her jewelry was "speculative at best." "It was never weighed, so these are really her best guesses. And, unfortunately, in restitution hearings, [one] can't value the best guess."

The prosecutor asserted that Marchionda's statements regarding the items of jewelry were "detailed and very personal . . . and [she] found that to be very dependable in terms of how she felt about the pieces and about how she went about valuating them. [¶] And she actually provided, created, handwritten notes. . . . And . . . she had made these handwritten notes with a description of all of these pieces and had no value on them . . . until she went in to the jeweler, spent some time there, and talked to him about

feeling the weight of the necklace that she had on [that day] and was able to compare that visually with what she saw at the jewelers and was tutored about how the valuation would proceed in terms of weight and stones, that she . . . actually attached a [value] to the handwritten notes." Finally, "[there had] been a consistency in terms of all the different reports and the valuations. Each one ha[d] been more specific and more articulate, and [the prosecutor thought] that show[ed] credibility . . . . And [she] believe[d] that the restitution amount that [Marchionda was] asking for [was] supported by the evidence received [at the] hearing."

Defense counsel argued that, the first figure Marchionda gave to the police regarding the value of the jewelry taken was $93,000. She then sat down, made an exhaustive list and went to the jewelry store for verification of her estimates. "So she had a figure in mind . . . ." The defense "would[,] [also,] at this point . . . submit that [Marchionda] had the ability to contact others who purchased some of this jewelry and ask them [what it cost]. We have no idea what these items were purchased for at the time. And, again, we don't have the detail on the jewelry[.] [Counsel believed] jewelry [could] be very specifically, with the right information, valued. Otherwise, the values [were] all specious."

The trial court responded, "Okay. [These are] all fairly older items in terms of family gifts and so forth. I would add, in response to your counter argument, that the estimate which is now 72,000 was 93,000. So she's actually dropped this by close to $21,000. That does not strike me as a person who is trying [to] inflate [the value of the jewelry] and reach a conclusion to satisfy herself without having relied upon the expertise of the jeweler . . . ."

After hearing further argument regarding the value of the gold at the Coins Plus store, the trial court made "the following finding based upon the evidence that [it] heard: [¶] That Mr. Cornell, for the stolen property, owes the victim in this case, Laurel Marchionda, the sum of $72,340."

With regard to how Cornell was to make restitution, the prosecutor indicated that "[t]he Department of Corrections deals with it." The prosecutor stated that she would "provide the Department of Corrections with the information; however, since [Cornell was not going to be housed] . . . with the Department of Corrections, [he was to be] housed at county jail, [she would] find out what [she could] do to have county jail actually do [to collect the restitution.]" The trial court then calendared a hearing for March 29, 2012, to determine how the matter should be handled.

At a hearing held on April 11, 2012, the prosecutor indicated that, under the circumstances presented, the trial court should "order the amount of restitution per civil judgment." The trial court responded, "All right. If the People make that request and file the appropriate paperwork for that, I would consider signing it; but the order . . . is that he pay the victim in the case $72,340 plus 10 percent interest per annum. And that will be paid in accordance with [the] code section. [¶] . . . [A]t this point it's a standing order that he pay."

Cornell filed a timely notice of appeal on April 23, 2012. In the notice, Cornell stated, "This appeal is only based on that portion of the sentence related to the victim restitution order calculation that resulted from a formal contested hearing held on March 12, 2012."

CONTENTIONS

After examination of the record, appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed October 12, 2012, the clerk of this court advised Cornell to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.