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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.

ALEX ZSIGMOND,

Defendant and Appellant.

B270025

(Los Angeles County  
Super. Ct. No. LA080988)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph A. Brandolino, Judge. Modified and, as so modified, affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A. Miyoshi and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Alex Zsigmond pleaded no contest to burglary. After a restitution hearing, the trial court awarded \$20,232 in direct victim restitution to the estate of the deceased victim pursuant to Penal Code section 1202.4.<sup>1</sup> Zsigmond contends the restitution order must be reversed because there was no identifiable victim of his crime and because the trial court misstated the name of the victim's estate. We modify the judgment to correct the trial court's clerical error, and otherwise affirm the judgment.

#### BACKGROUND AND PROCEDURAL HISTORY

Lucy Brick died intestate on March 27, 2013. She was a collector who invested in vintage collectibles. From September 2013, Brick's sister, Lesley Kraut, served as a co-administrator of Brick's estate. Probate proceedings were ongoing as of the date of the restitution hearing. On April 28, 2015, Zsigmond burglarized Brick's vacant house and stole various items contained therein, including many of the collectibles.

The People charged Zsigmond with two counts of burglary (§ 459) and one count of grand theft auto with a prior (§ 666.5).<sup>2</sup> As relevant here, the information did not name a specific victim; it alleged "the crime of burglary, in violation of Penal Code section 459, a Felony, was committed by . . . Alex Zsigmond, who did enter a vacant house with the intent to commit larceny and any felony." The information further alleged Zsigmond had

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

<sup>2</sup> The auto theft and second burglary allegedly occurred on May 12, 2015, and appear to pertain to a different incident or incidents than the burglary of Brick's home.

suffered a prior “strike” conviction for first degree burglary and had served four prior prison terms within the meaning of section 667.5, subdivision (b).

On August 20, 2015, Zsigmond pleaded no contest to second degree burglary pursuant to *People v. West* (1970) 3 Cal.3d 595,<sup>3</sup> and admitted suffering the prior strike conviction. The trial court sentenced him to the low term of 16 months, doubled pursuant to the “Three Strikes” law. It dismissed the other two counts in the interests of justice. (§ 1385.) It imposed a restitution fine, a suspended parole restitution fine, a court operations assessment, a criminal conviction assessment, and a crime prevention fine. It ordered Zsigmond to pay victim restitution in an amount to be determined at a subsequent hearing.

At the restitution hearing, Kraut, the estate co-administrator, testified that she had calculated the value of the unrecovered stolen items at \$34,556, and the cost of repairs and upgrades necessitated by Zsigmond’s entry into the house at \$2,180. Kraut explained the basis for her calculations and provided an itemized list of the stolen property.

During the restitution hearing, defense counsel argued that based on *People v. Runyan* (2012) 54 Cal.4th 849, a deceased victim’s estate cannot be awarded restitution pursuant to section 1202.4 for harm occurring after the victim’s death. The prosecutor countered that Brick, the decedent, was not the actual victim; instead, the estate owned the house and contents and was the direct victim.

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<sup>3</sup> “A plea under *West* allows a defendant to plead guilty to a charge without admitting that he or she committed the crime alleged.” (*People v. Riddles* (2017) 9 Cal.App.5th 1248, 1250, fn. 1.)

When Kraut’s testimony resumed, she explained that Brick had died intestate, and probate had not been completed as of the date of the restitution hearing. From the time Brick died, all her property was “bound up as part of the estate,” including all the property stolen. Kraut provided to the court “letters of administration,” which the court admitted into evidence, indicating Kraut became an appointed co-administrator of the estate on September 10, 2013.

The trial court credited Kraut’s testimony and concluded her valuation of the stolen items and collectibles was for the most part reasonable, but discounted her estimate to some extent and excluded restitution for upgrades such as security lighting installed after the burglary. It ordered Zsigmond to pay \$20,323 to “the estate of Lucy Kraut” pursuant to section 1202.4, subdivision (f).

Zsigmond appeals.

## DISCUSSION

### 1. *The trial court’s restitution order was not an abuse of discretion*

We review a trial court’s restitution order for abuse of discretion, which will be found only when there is an absence of a factual and rational basis for it. (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664; *People v. Jessee* (2013) 222 Cal.App.4th 501, 507; *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542.) “[A]n order resting on a demonstrable legal error constitutes such an abuse.” (*People v. Hume* (2011) 196 Cal.App.4th 990, 995; *People v. Woods* (2008) 161 Cal.App.4th 1045, 1049.)

California’s Constitution entitles crime victims to restitution. (Cal. Const., art. I, § 28, subd. (b)(13); *People v. Lockwood* (2013) 214 Cal.App.4th 91, 95.) This constitutional

mandate is codified in section 1202.4, subdivision (f), which states that “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.” (See *People v. Runyan*, *supra*, 54 Cal.4th at p. 856.) A victim’s restitution right is to be broadly and liberally construed. (*People v. Weatherton* (2015) 238 Cal.App.4th 676, 684; *People v. Cowart* (2015) 238 Cal.App.4th 945, 954.)

The California Constitution, article I, section 28, subdivision (b)(13) specifies that a “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of a crime, and additionally defines a victim to include, *inter alia*, a lawful representative of a crime victim who is deceased. (See *People v. Runyan*, *supra*, 54 Cal.4th at p. 860.) Subdivision (k) of section 1202.4 defines crime victims for purposes of restitution under that statute. In pertinent part, it states: “(k) For purposes of this section, ‘victim’ shall include all of the following: [¶] . . . [¶] (2) A corporation, business trust, *estate*, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.” (§ 1202.4, subd. (k), *italics added*.) “The case law has ascribed a precise meaning to the phrase ‘direct victim,’ as that phrase has appeared in several restitution statutes. Thus, it is established that a statute ‘permitting restitution to entities that are “direct” victims of crime [limits] restitution to “entities *against which* the [defendant’s] crimes had been committed”—that is, entities that are the “immediate objects of

the [defendant's] offenses.” [Citation.]’ [Citations.]” (*People v. Runyan, supra*, at p. 856.) A crime victim may “recover only for losses *personally incurred by that victim.*” (*Id.* at p. 859.) A lawful representative of a deceased victim may enforce a restitutionary obligation owed to a victim who has died. (*Ibid.*, fn. 3.)

Section 1202.4, subdivision (f)(3) provides that a restitution award: “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.” (Italics added; see *People v. Runyan, supra*, 54 Cal.4th at p. 860.)

A restitution award must be based on the amount of loss claimed by the victim, or any other showing made to the court. (§ 1202.4, subd. (f).) When determining the amount of loss, the trial court applies the preponderance of the evidence standard and may use any rational method reasonably calculated to make the victim whole. (*People v. Nichols* (2017) 8 Cal.App.5th 330, 342; *People v. Jessee, supra*, 222 Cal.App.4th at pp. 506-507; *People v. Gemelli, supra*, 161 Cal.App.4th at p. 1542.)

Here, Zsigmond does not challenge the sufficiency of the evidence supporting the trial court’s valuation of the stolen property or the cost of the repairs occasioned by his burglary.<sup>4</sup>

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<sup>4</sup> Although one of the headings in Zsigmond’s opening brief states that the amount awarded by the trial court was not supported by substantial evidence, his actual argument is limited

Instead he contends *People v. Runyan* compels the conclusion that the estate was not a direct victim entitled to restitution because his crime postdated Brick's death. Consequently, he argues, the restitution award violated his federal due process rights. We disagree.

In *People v. Runyan*, the defendant, while intoxicated, killed the victim in a freeway collision. As a result, he was convicted of several felonies and sentenced to prison. The victim left no surviving family, dependents, or heirs. The trial court ordered Runyan to pay substantial restitution to the decedent's estate for probate, estate administration, and funeral expenses, as well as for diminution in value to the decedent's property. (*People v. Runyan, supra*, 54 Cal.4th at pp. 853-854.) The California Supreme Court concluded the restitution order was improper. (*Id.* at p. 856.) It reasoned that under section 1202.4, only a direct victim may recover restitution for economic losses personally incurred as a result of the defendant's conduct. (*Runyan*, at pp. 859-860, 864.) A direct victim is the person or entity against whom the defendant's crime was committed, that is, one who is the immediate object of the offense. (*Id.* at p. 856.) The estate was not a direct victim of the fatal collision; it was not the object of defendant's alcohol-related offenses. (*Id.* at p. 857.) The estate did not exist at the time the crimes were committed, but only came into being as a result of the vehicular homicide.

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to the assertion that the estate was not a direct victim within the meaning of the statute.

Thus, the estate was “not entitled to restitution, on its own behalf,” as a direct victim.<sup>5</sup> (*Ibid.*)

Zsigmond argues that *Runyan* applies here. He contends that because he burgled the home and stole items after Brick’s death, “Brick did not suffer any personal losses as a result of the underlying burglary.” Under *Runyan*, he urges, the estate is not a direct victim of a crime, and in any event the “estate still had not . . . been settled” at the time of the restitution hearing. Therefore, he urges, “there was no identifiable victim to have suffered any cognizable losses at the time of either the crime or the restitution hearing.”

We disagree. *Runyan* is readily distinguishable from the instant matter. In *Runyan*, the claimed economic losses were occasioned by the defendant’s offense against the decedent. In contrast, when Zsigmond committed the burglary, Brick was already deceased. The victim of the burglary was not Brick, but her estate. Upon Brick’s death, her home and its contents became part of her intestate estate, which, after completion of probate, would be distributed to her heirs. Thus, the thefts and damage to the house were not post-death economic losses suffered by Brick; they were offenses against the estate, which was the direct victim of the crime. Unlike in *Runyan*, the estate

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<sup>5</sup> *Runyan* further considered what economic damages accrue after a crime victim has died, as well as the circumstances under which a deceased victim’s estate may receive restitution for economic losses the victim personally incurred before death. (*People v. Runyan, supra*, 54 Cal.4th at pp. 853-854, 857-859.) *Runyan*’s analysis on these points has no application here, because the estate, not the decedent, is the direct victim of Zsigmond’s crime.



did not come into being as a result of the defendant's crime; Brick's death was unrelated to Zsigmond's offense, and the estate predated the burglary.<sup>6</sup> Under these circumstances, *Runyan* is inapplicable, and restitution was properly awarded to the estate as the direct victim of Zsigmond's offense. (See *People v. Jessee*, *supra*, 222 Cal.App.4th at p. 509 [life insurance and other assets owned by murder victim became part of his estate as a result of his death; "in this sense, [the victim's] estate itself is an entity against which those crimes were committed" and the estate was entitled to restitution on its own behalf].)

2. *Correction of the minute order and abstract of judgment*

At the conclusion of the restitution hearing the trial court stated, "I'll order that as restitution in that amount to be paid to the estate of Leslie (sic) Kraut, which I believe is the true victim in the case." The court then asked, "Leslie is the decedent?" The prosecutor replied, " 'Lucy.' " The court responded: "I'm so sorry. I misspoke. Let's make clear. For the record, it'll be the estate of Lucy Kraut."

It is undisputed that this was error, as the decedent was Lucy Brick; the estate's co-administrator was Lesley Kraut. The court's misstatement is reflected in the minute order and abstract of judgment, as well as in the reporter's transcript. The People contend that the trial court simply misspoke, and its error can be corrected by this court without the necessity for remand. Zsigmond, on the other hand, argues this is "not a clerical error

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<sup>6</sup> Zsigmond is incorrect that the estate was "potentially nonexistent." As noted, Kraut had been appointed co-administrator of the estate approximately a year and a half before the burglary, and provided letters of administration demonstrating the estate was in probate.

subject to simple correction” because only minute orders, not oral statements by the court, are subject to correction on appeal. Further, he contends “[t]here is no indication whether there does or does not exist such an estate to make such a claim.”

The People have the better argument. “A trial court may correct a clerical error, but not a judicial error, at any time. A clerical error is one that is made in recording the judgment; a judicial error is one that is made in rendering the judgment. [Citations.]” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205.) Clerical errors include “inadvertent errors made by the court ‘which cannot reasonably be attributed to the exercise of judicial consideration or discretion.’” (*Conservatorship of Tobias* (1989) 208 Cal.App.3d 1031, 1034; *Bowden v. Green* (1982) 128 Cal.App.3d 65, 71.) A “judicial error is the deliberate result of judicial reasoning and determination.” (*Conservatorship of Tobias*, at p. 1035.) “‘The test is simply whether the challenged judgment was made or entered inadvertently (clerical error) or advertently (judicial error).’” (*Bowden*, at p. 71.) We may correct a clerical error at any time. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Amaya* (2015) 239 Cal.App.4th 379, 385.)

Here, there is no doubt the court’s misstatement was merely a clerical error, not an error based upon its exercise of judicial consideration or discretion. As the colloquy set forth *ante* demonstrates, the trial court’s misstatement was purely inadvertent. It was momentarily confused regarding the decedent’s and co-administrator’s names. There is no question it intended restitution to be paid to the decedent’s estate. Consistent with its statements earlier in the hearing, the court viewed the estate as the “true victim” in the case. Its statements leave room for no doubt that it intended to award restitution to

the decedent's estate. The only estate to which the court could possibly have been referring is that of Lucy Brick. Accordingly, we order the court's clerical error corrected.

#### DISPOSITION

The clerk of the superior court is directed to modify the abstract of judgment dated January 28, 2016 and the minute order dated January 27, 2016 to reflect that restitution is ordered to be paid to the estate of Lucy Brick. The clerk is directed to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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BACHNER, J.\*

We concur:

EDMON, P. J.

LAVIN, 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.