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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.

KEYMOND MIGUEL MURPHY,

Defendant and Appellant.

2d Crim. No. B270874
(Super. Ct. No. MA067084)
(Los Angeles County)

Keymond Miguel Murphy appeals the judgment entered following his no contest plea to two counts of first degree burglary (Pen. Code,¹ § 459). The trial court sentenced him to two years in state prison and ordered him to pay victim restitution pursuant to section 1202.4. Appellant contends the court erred in awarding victim restitution for the costs of installing a security camera and sensors. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS AND PROCEDURAL HISTORY

Appellant was charged by information with five counts of first degree burglary. Count 1 alleged that on September 17, 2015, appellant had entered the residence of Jacquelyn Hoskins “with the intent to commit larceny and any felony.” It was further alleged that the crime was “a violent felony within the meaning of [section] 667.5[,] [subdivision] (c) in that another person, other than an accomplice, was present in the residence during the commission of the . . . offense.” Each count also included allegations that the offenses were serious felonies (§ 1192.7, subd. (c)) and that appellant was ineligible for probation absent unusual circumstances (§ 462, subd. (a)).

Appellant entered pleas of not guilty to all counts and denied the attendant allegations. When the case was called for a pretrial hearing on January 21, 2016, appellant’s trial counsel announced that appellant was agreeing to plead no contest to counts 1 and 2 in exchange for a two-year prison sentence. The prosecutor stated that he had agreed to this disposition “with an understanding that there would be a *Harvey*² waiver that encompasses all counts.”

Appellant waived his constitutional rights and entered a *Harvey* waiver. In proceeding to take appellant’s plea on count 1, the court asked the prosecutor, “[a]re you striking person present [allegation]?” The prosecutor responded, “Yes.” Appellant then pled no contest to counts 1 and 2. The court accepted the plea and found a factual basis for it. The matter was continued for sentencing and restitution.

At the sentencing hearing, the court imposed a

² *People v. Harvey* (1979) 25 Cal.3d 754.

two-year state prison term on count 1 and a concurrent two-year term on count 2. Various fines and fees were also imposed. The prosecutor then submitted two victim restitution request forms. The first form was submitted on behalf of David Warren, the named victim in count 4. Warren sought a total of \$5,010 for a stolen iPad, money that had been fraudulently withdrawn from his bank account, and lost wages. The court awarded victim restitution in the full amount requested.

The second victim restitution request form was submitted on behalf of Hoskins, the named victim in count 1. Hoskins sought a total of \$2,346.92, which included \$1,154.86 for the cost of purchasing and installing security cameras and sensors for her residence. Appellant objected to the claimed costs for security. In overruling the objection, the court found that “the cost for additional security expenses . . . is a reasonable proximate causation [*sic*] that they would be entitled to given the conduct of multiple counts of residential burglary.” The court awarded restitution in the full amount requested by Hoskins. At the conclusion of the hearing, the court dismissed the remaining counts and allegations in the interests of justice.

DISCUSSION

Appellant contends the trial court erred in ordering him to pay Hoskins \$1,154.86 for the costs of purchasing and installing security cameras and sensors at her residence. We disagree.

As relevant here, subdivision (f) of section 1202.4 provides 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.” A victim’s right to restitution pursuant to this section is broadly and liberally construed. (*People v. Sly* (2014) 223 Cal.App.4th 44, 63.) “The term ‘economic losses’ is also accorded an expansive interpretation [and] is not limited to out-of-pocket losses. [Citation.]” (*People v. Williams* (2010) 184 Cal.App.4th 142, 147.) We review victim restitution orders for an abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.)

The court did not abuse its discretion in ordering appellant to reimburse Hoskins for the cost of purchasing and installing security cameras and sensors at her residence. Section 1202.4 expressly defines an “economic loss” as including the “[e]xpenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.” (*Id.*, subd. (f)(3)(J).) A violent felony, as defined in subdivision (c) of section 667.5, includes “[a]ny burglary of the first degree . . . , wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.” (*Id.*, subd. (c)(21).)

Here, the information alleged that Hoskins was present in her residence when appellant committed the burglary. Although the allegation was stricken pursuant to the plea agreement, appellant executed a *Harvey* waiver. Accordingly, the court could properly consider the alleged fact of Hoskins’ presence in awarding her restitution.³

³ In his reply brief, appellant contends that his *Harvey* waiver does not apply to the allegation that Hoskins was present

Moreover, subdivision (f)(3) of section 1202.4 merely contains a nonexclusive list of losses that must be included in an order of victim restitution. In other words, that a court *shall* order reimbursement of security expenses for a victim of a burglary that qualifies as a violent felony does not mean that a court *shall not* order reimbursement of such expenses for a victim of a burglary that does not so qualify. “Because the statute [section 1202.4] uses the language ‘including, but not limited to’ these enumerated losses, a trial court may compensate a victim for any economic loss which is proved to be the direct result of the defendant’s criminal behavior, even if not specifically enumerated in the statute. [Citation.]” (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046.)

In ordering the challenged restitution, the court found that Hoskins would not have incurred the expense of purchasing and installing security cameras and sensors if appellant had not burglarized her home along with several others. Because there is a factual and rational basis for the

when he burglarized her residence because the allegation “was not dismissed pursuant to the plea bargain; it was eliminated when the People amended the information.” It appears clear from the record, however, that the allegation was stricken for the very purpose of allowing appellant to plead guilty to the substantive charge in accordance with the plea agreement.

Appellant’s citation to *People v. Lai* (2006) 138 Cal.App.4th 1227, is also unavailing. The court in that case held that a defendant sentenced to prison following his conviction by a jury could not be required to pay victim restitution for losses caused by conduct for which he was not convicted. (*Id.* at p. 1246.) Appellant, unlike the defendant in *Lai*, pled no contest and executed a *Harvey* waiver.

court's conclusion that the claimed costs were incurred as a result of appellant's criminal conduct, its inclusion of those costs in the victim restitution order does not amount to an abuse of discretion. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.)

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Lisa M. Chung, Judge
Superior Court County of Los Angeles

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

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