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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN MAURICIO MORALES,

Defendant and Appellant.

B294263

(Los Angeles County
Super. Ct. No. KA118723)

APPEAL from an order of the Superior Court of Los Angeles County, Stacy L. Wiese, Judge. Affirmed.

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

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Following a no contest plea, defendant appeals from his convictions for one count of fleeing a pursuing police officer's motor vehicle while driving recklessly and one count of driving or taking a vehicle without consent. Defendant contends substantial evidence did not support the trial court's \$5,427.63 victim restitution order. He also contends the court violated his federal and state due process rights by imposing fines and fees without sua sponte undertaking an inquiry into his ability to pay them, citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). We affirm on all grounds.

FACTS AND PROCEDURAL BACKGROUND

On July 26, 2018, defendant led police officers on a high-speed chase for three miles before laying down a stolen motorcycle and fleeing on foot. Defendant was pursued and arrested. Inside defendant's backpack, officers discovered three credit card readers, 17 debit and credit cards belonging to various people, three checks, a digital scale, one shaved key, a substance consistent with black tar heroin, two syringes, and one USB memory stick. Defendant told the officers that the backpack was not his and that he bought the motorcycle from someone on "Offer Up" for \$800.

In an information, the People charged defendant with one felony count of fleeing a pursuing police officer's motor vehicle while driving recklessly, one felony count of driving or taking a vehicle without consent, and several other offenses. The People further alleged that defendant suffered four prior convictions for driving or taking someone else's car without consent, and served five prior prison terms.

Pursuant to a plea agreement, defendant waived his constitutional rights, pleaded no contest to one felony count of fleeing a pursuing police officer's motor vehicle while driving recklessly and one felony count of driving or taking a vehicle without consent, and admitted one of his prior convictions under Penal Code section 666.5. The trial court sentenced defendant to three years in state prison. The court awarded defendant 41 days of presentence custody credit, consisting of 21 days of actual custody and 20 days of conduct credit. The court ordered defendant to pay a \$300 restitution fine, a \$80 court operations assessment (\$40 per count), a \$60 criminal conviction assessment (\$30 per count), an \$8 county emergency medical air transportation fee (\$4 per count), and a \$300 parole/post release community supervision fine (which was stayed).

The victim requested restitution for damage to his motorcycle, which included damage sustained to the ignition, body, fuel tank lock, top clamp, front cowl, front fender, headlight, right air duct, right lower, left lower, starter, clutch level, and battery. He also requested towing and storage fees for when the motorcycle was impounded, and lost wages. The victim provided receipts for the damage, towing and storage, his hourly wage, and the number of hours he was out of work due to the crime. The court observed there was a five-day gap from when the motorcycle was taken to when defendant was arrested with it, and the parties disputed defendant's responsibility to pay for the damage.

A contested restitution hearing was held on November 7, 2018. The court admitted a police video of the chase into evidence. It depicted defendant laying the bike down on its right side during the chase before fleeing on foot.

Defense counsel argued that defendant was not responsible for all the claimed restitution because there was no evidence showing defendant caused the damage to the motorcycle's left side, light, and ignition. Defense counsel pointed out that the video showed the bike being laid on its right side, not its left. Defense counsel noted that the motorcycle was stolen five days before defendant was apprehended with it.

The court acknowledge that it had "no evidence to support that [defendant] fully stole the vehicle." The court held that, despite the break in time between the theft and defendant's arrest, the motorcycle's damage was reasonably related to defendant's convictions for fleeing a pursuing police officer's motor vehicle while driving recklessly, and driving or taking a vehicle without consent. The court also stated: "the motorcycle is a very heavy item, and he didn't gently lay it down. Although he doesn't slam it down, he puts it down and then takes off running. There was obviously some damage that was done to it." The court stated it thought defendant laid the motorcycle down on its left side.

The court ordered defendant to pay the owner of the motorcycle a total of \$5,427.63 in restitution: \$827.60 for lost wages; \$333 for towing/storage; and \$4,267.03 for damage to the motorcycle.

Defendant filed a timely notice of appeal.

DISCUSSION

1. The Court Did Not Err in Ordering \$5,427.63 in Victim Restitution

Defendant argues the trial court erred in imposing restitution in the amount of \$5,427.63 for the damage incurred to the victim's motorcycle. Defendant asserts there was no

substantial evidence that he proximately caused all the damage to the victim's motorcycle.

a. Legal Principles

In California, a crime victim has a constitutional right to restitution for losses suffered as a result of a criminal act. (Cal. Const., art. I, § 28, subd. (b), par. (13), former art. I, § 28, subd. (b).) Penal Code section 1202.4 implements this constitutional mandate and provides: “in every case in which a victim has suffered economic loss as a result of the defendant's conduct,” the trial court must order the defendant to make “full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.” (§ 1202.4, subd. (f).)

A restitution order must “fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct.” (Pen. Code, § 1202.4, subd. (f)(3).) The statute provides that the amount of restitution ordered is to be “based on the amount of loss claimed by the victim or victims or any other showing to the court,” although the defendant has a right to a hearing “to dispute the determination of the amount of restitution.” (Pen. Code, § 1202.4, subd. (f); *People v. Fulton* (2003) 109 Cal.App.4th 876, 885-887 (*Fulton*).)

At the 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 (*Millard*).) Once the People have made a prima facie showing of the victim's loss, “the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim.” (*Ibid.*; *Fulton, supra*, 109 Cal.App.4th at

p. 886.) The standard of proof at the restitution hearing is proof by a preponderance of the evidence. (*Millard*, at pp. 26-27.)

“In a criminal case an award of restitution is committed to the sound discretion of the trial court. No abuse of that discretion occurs as long as the determination of economic loss is reasonable, producing a nonarbitrary result.” (*People v. Giordano* (2007) 42 Cal.4th 644, 665.) “ ‘ “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” ’ ” (*People v. Baker* (2005) 126 Cal.App.4th 463, 467.) We review the amount of any award for substantial evidence. (*Millard*, *supra*, 175 Cal.App.4th at p. 26.)

b. No Abuse of Discretion

Here, the People made a prima facie showing of the victim’s loss with receipts for the damage sustained to the motorcycle and towing/storage expenses, and evidence of defendant’s lost wages. Thus, the burden shifted to defendant to demonstrate that the amount of the loss is other than that claimed by the victim. (See *Fulton*, *supra*, 109 Cal.App.4th at p. 886 [“Once the record contains evidence showing the victim suffered economic losses. . . , this showing establishes the amount of restitution the victim is entitled to receive, unless challenged by the defendant. In that event, the burden shifts to the defendant to show [the losses] are not recoverable. . . .”].)

Defendant argued he did not cause the damage to the motorcycle’s left side, light, or ignition, and relied on the police video that showed defendant fleeing police and laying the motorcycle down on its right side. Yet, this evidence failed to show that defendant was not the cause of the left side, light, and ignition damage. The video merely shows defendant caused

damage to the right side of the motorcycle. There was no evidence presented to show the damage to the motorcycle was present before defendant's unlawful taking or driving. Testimony about the condition of the motorcycle or photos of it at the time of defendant's claimed illegal purchase could have shown what damage existed before defendant took possession of the vehicle. Neither was introduced by the defense. Without evidence of the motorcycle's condition at the time defendant took possession, defendant did not satisfy his burden to demonstrate that the amount of the loss is other than that claimed by the victim.

Defendant's claim that the trial court mistakenly believed he dropped the motorcycle on its left side rather than its right during the chase does not affect the trial court's conclusion that the motorcycle's damage was reasonably related to defendant's convictions. The court did not order restitution solely for the damage recorded in the police chase video. The court expressly concluded the damage was reasonably related to defendant's conviction for driving and taking the motorcycle without consent.

To the extent defendant argues the court ordered him to pay restitution for uncharged acts, he has not shown that to be the case. Defendant argues: "certain items of the claimed loss most likely occurred at the time of the theft, such as, the punched ignition, the damaged fuel tank lock, and damage to the starter." Yet, defendant was charged and convicted of driving or taking a vehicle without consent. Punching the ignition, damaging the starter, and breaking the fuel tank lock appear to have been necessary casualties of defendant's nonconsensual operation of the motorcycle. There is no evidence in the record to indicate otherwise.

We also observe that defendant's reliance on *In re Maxwell C.* (1984) 159 Cal.App.3d 263, 265 (*Maxwell*), is misplaced. *Maxwell* deals with restitution orders for juvenile offenders permitted under Welfare and Institutions Code section 731, which are "appropriate only where they serve a rehabilitative function." (*Ibid.*) The case is factually inapt: the appellate court reversed the restitution order where the minor was ordered to pay restitution for all losses suffered in an auto burglary because the minor at all times denied responsibility for the burglary and only admitted to receiving the stolen car stereo. *Maxwell* concluded the minor could not be ordered to pay restitution for the entire vehicle; importantly, the case did not discuss whether the minor was responsible for the damage sustained to the stereo in the minor's possession. Unlike *Maxwell*, defendant had possession of and was driving the entire, damaged, stolen vehicle at the time of his arrest.

We conclude the trial court's finding that the motorcycle's damage was reasonably related to defendant's convictions was supported by substantial evidence.

2. Defendant's Ability to Pay Fines

Defendant argues that, under *Dueñas, supra*, 30 Cal.App.5th 1157, the trial court violated his federal and state right to due process rights because the court imposed \$448 in various fines, fees, and assessments without a hearing on his ability to pay. Defendant asserts "All of the orders to pay must be reversed."

In *Dueñas*, a homeless, jobless mother of two children, who subsisted on public aid while suffering from cerebral palsy, appealed fines imposed against her despite the trial court's finding that she could not pay them. (*Dueñas, supra*,

30 Cal.App.5th at pp. 1160-1161.) Dueñas was caught in a longstanding cycle of poverty that had been exacerbated by fines she accrued by driving with a suspended license. Dueñas had repeatedly served time in jail in lieu of paying fines because of her inability to pay, and had suffered other severe adverse consequences due to nothing more than her own impoverishment. (*Ibid.*)

In the matter before the Court of Appeal, Dueñas had requested, and the trial court had granted, a hearing to determine her ability to pay a \$30 court facilities assessment (Gov. Code, § 70373), a \$40 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)), and a \$150 restitution fine (Pen. Code, § 1202.4, subd. (b)), as well as previously imposed attorney fees. (*Dueñas, supra*, 30 Cal.App.5th at pp. 1161–1162.) Dueñas presented undisputed evidence of her inability to pay, and the trial court waived the attorney fees. However, the court imposed the assessments and fine despite its finding that Dueñas was unable to pay them because it was statutorily required to impose them. (*Id.* at p. 1163.) The Court of Appeal held that the consequences *Dueñas* faced amounted to punishment on the basis of poverty, which the state and federal constitutional rights to due process and equal protection forbid. (*Id.* at pp. 1166–1172.)

The harm that caused Dueñas’s situation to rise to the level of a constitutional violation was the application of the statutes imposing fines, fees, and assessments, in the face of undisputed evidence that she was unable to pay and would undoubtedly suffer penalties based solely on her indigence.

Unlike *Dueñas*, where the record was replete with evidence and argument regarding defendant’s poverty, defendant’s ability to pay the fines and fees was not an issue below. There is no

evidence regarding defendant's financial situation to indicate that this is a case similar to *Dueñas* and that such fines and fees would force defendant to be penalized for his own poverty. Moreover, defendant's three-year sentence will afford him time to pay off much of the \$448 debt with his prison wages. (See *People v. Hennessey* (1995) 37 Cal.App.4th 1830, 1837 [ability to pay includes a defendant's ability to obtain prison wages].)

Because defendant's situation lacks the hallmarks that defined *Dueñas*, we decline to apply its reasoning to the facts before us.

DISPOSITION

We affirm the judgment.

RUBIN, P.J.

I CONCUR:

KIM, J.

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BAKER, J., Concurring

I agree the judgment should be affirmed. I join the majority's discussion of defendant John Morales's (defendant's) victim restitution argument. I do not join the majority's discussion of defendant's *People v. Dueñas* (2019) 30 Cal.App.5th 1157 argument. That argument was forfeited by the absence of an ability to pay objection at sentencing. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154-1155.)

BAKER, J.