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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

ELIDA ESPIQUITA,

Defendant and Appellant.

B280900
(L.A. Super. Ct.
No. BA441258)

APPEAL from an order of the Superior Court of Los Angeles County. Craig E. Veals, Judge. Affirmed.

Lori Nakaoka, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Elida Espiquita pled no contest to assault by means of force likely to produce great bodily injury. She was sentenced to formal probation and ordered to pay restitution to the victim for medical costs and lost wages. On appeal, she argues there was no substantial evidence supporting the court's award of lost wages. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 25, 2015, the victim was talking with Espiquita's boyfriend at a bar when Espiquita threw a glass bottle at the victim's face. Security officers escorted the victim outside. She was bleeding. Espiquita followed the victim, grabbed her by the hair, and slammed her head repeatedly into a metal handrail. Espiquita was arrested by the police. The victim "suffered severe injuries to the face and extremities," experienced a concussion, and sustained damage to her front teeth.

Approximately eight months later, on February 3, 2016, the victim told the probation officer that she suffered from daily headaches, and was "unable to see clearly or read" at times. She was awarded long-term disability benefits based on evidence she suffered from post-traumatic stress disorder and depression stemming from the attack.

The parties stipulated that the victim had incurred medical costs of \$8,000 for her dental repairs. At the restitution hearing on January 26, 2017, the prosecution also requested \$70,612.52 for two years of lost wages. In support of this request, the prosecution submitted evidence that the victim had earned an average of \$91.55 a day during the year prior to the attack. There was also evidence that the victim was eligible to receive long-term disability benefits for up to two years after the attack.

As the restitution hearing was held one year and eight months after the attack, the total amount of lost wages was based on the addition of past wages and future wages lost. Past wages were calculated by multiplying \$91.55 by the number of days between the attack and the restitution hearing plus 10 percent interest. Future wages were calculated by multiplying \$91.55 by the number of days between the restitution hearing and May 25, 2017, two years after the attack. The resulting sum was \$70,612.52.

The court awarded the victim the entire amount requested in lost wages plus \$8,000 in medical costs. Espiquita timely appealed.

DISCUSSION

When a defendant is convicted of a crime involving a victim who “has suffered economic loss as a result of the defendant’s conduct” (Pen. Code, § 1202.4, subd. (f)), the court must require the defendant to pay full restitution directly to the victim or victims of the crime. “Additionally, direct victims of crime have a statutory right to restitution on the full amount of their losses without regard to the full or partial recoupment from other sources (except the state Restitution Fund). [Citations.]” (*People v. Baker* (2005) 126 Cal.App.4th 463, 468.) This includes lost wages. (Pen. Code, § 1202.4, subd. (f)(3)(D).) “Once the victim has made a prima facie showing of his or her loss, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. [Citations.]” (*People v. Prosser* (2007) 157 Cal.App.4th 682, 691.) We review a restitution order for abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.)

Espiquita argues the trial court abused its discretion in awarding \$70,612.52 in lost wages because (1) the award was based on an unsupported conclusion that she earned an average of \$91.55 per day, and (2) there was no evidence the victim would be unable to work for two years. We disagree.

In support of the first contention, Espiquita argues that the evidence showed the victim's average daily income was only \$88.18. Espiquita bases this contention on evidence that, in the 145 days before the crime (approximately five months), the victim earned \$12,787.22, which divided by 145 days equals \$88.18 per day. The prosecution, on the other hand, looked at the victim's earnings over the year prior to the attack. The evidence showed that the victim had earned \$33,415.55 during that time which divided by 365 days equals \$91.55 per day.

Neither party's calculation was erroneous. The parties simply chose different periods of time by which to estimate the victim's daily earnings. The law does not require the trial court to calculate the victim's lost wages based on only several months prior to the attack; rather, it was reasonable for the trial court to take an average based on a year prior.

Espiquita next challenges the court's decision to award lost wages for a period of two years. Espiquita does not dispute that the victim was unable to work for approximately 14 months after the attack due to her injuries, but argues that there was no evidence the victim could not work after that time. In the trial court, Espiquita did not object to the court's conclusion that the victim could not work for two years after the attack, and has therefore forfeited the argument. (*People v. Brasure* (2008) 42 Cal.4th 1037, 1075.)

Even if we were to decide the argument on its merits, we would find no abuse of discretion. Espiquita argues that the victim was able to return to work on July 6, 2016, when her teeth were repaired. This argument does not address the victim's other injuries beyond dental damage that prevented her from working. The victim worked as a lifeguard prior to the attack, an occupation which requires both physical fitness and mental focus. The prosecution presented evidence that eight months after the attack the victim suffered from daily headaches, had difficulty seeing at times, and was disabled from post-traumatic stress disorder and depression. This was sufficient to establish a prima facie case that the victim's serious medical problems would inhibit her from lifeguarding for approximately another year. The defense did not present any evidence to rebut that inference and, therefore, did not meet its burden of showing that the amount of lost wages was other than that claimed by the victim.

DISPOSITION

The restitution order is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.