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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WHITNEY ROYAL,

Defendant and Appellant.

B280933

(Los Angeles County
Super. Ct. No. JGA096778)

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

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Idan Ivry and William H. Shin, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Whitney Royal (defendant) appeals from the order for restitution made as part of her probationary sentence. She contends that restitution was improperly awarded to the victim of a crime for which defendant was not convicted, and that the award was not reasonably related to her offense or to deterrence of future criminality. Finding no merit to defendant's contentions, we affirm the order.

BACKGROUND

Defendant was charged with one felony count of receiving stolen property exceeding \$950 in value (\$5,000 worth of jewelry), in violation of Penal Code section 496, subdivision (a).¹ In September 2016, defendant entered into a plea agreement in which she agreed to plead no contest to the charge, and would serve a jail sentence concurrent to any sentence imposed in another case pending in Orange County. Furthermore defendant would be placed on three years of formal probation with standard terms and conditions, including the payment of victim restitution. Defendant entered her plea of no contest and her counsel stipulated to a factual basis based on the preliminary hearing transcript, the police reports, probation report, and the information.²

Defendant returned to court on February 9, 2017, for sentencing and a restitution hearing. The Orange County court had placed defendant on probation with 180 days of electronic monitoring. The subject court and counsel then modified the agreed upon disposition. The terms were three years of formal probation, conditioned upon the completion of the Orange County

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

² The preliminary hearing transcript and the police reports have not been included in the appellate record.

electronic monitoring, 25 days of community service, credit for two actual days of time served, and restitution to be determined the day of sentencing. The trial court sentenced defendant as agreed, ordered defendant to pay mandatory fines and fees, as well as direct victim restitution to be determined later that day, and to comply with other specified conditions of probation.

The restitution hearing was then conducted. The parties had filed memoranda of points and authorities in support of and in opposition to the restitution requested by the prosecution. In argument, defense counsel accepted the statement of facts in the prosecution's motion for restitution (apparently taken from the probation and police reports), and argued only that those facts did not support a restitution award. On appeal, the parties have summarized the facts set forth in the prosecution's motion and in the early disposition probation report. We do the same.

The burglaries

On April 16, 2015, 82-year-old Rosaleen Rickerby (Rickerby) left her residence at 9:30 a.m., after turning off the lights and locking the door. When she returned that evening, the lights were on, the front door was unlocked, and a rear sliding glass door was shattered. A cabinet and various dresser drawers were open, and belongings strewn on the floor. Jewelry, photographs, and letters from her recently deceased husband were missing. Rickerby's neighbor maintained a security camera, and footage recorded that day captured the image of a newer model tan or gold Jeep Patriot SUV driving past her residence, making a U-turn, and then parking in front. The number of occupants of the Jeep could not be determined, as tree branches blocked the view. Sometime after the Jeep was parked, two suspects could be seen walking up Rickerby's driveway to the backyard. About 12 minutes later the Jeep backed up to the front of the house, and a few minutes after that, the same two suspects

returned and entered the Jeep, before it was driven away. The investigating detective opined that at least three people were involved in the burglary: the two individuals who went toward the backyard, and a getaway driver.

At approximately 11:50 a.m., one month later on a Tuesday, a witness observed defendant get out of her Jeep, walk to the front door of the witness's neighbor's house (the Peraza residence), and knock on the door. When no one answered, defendant got back into the Jeep on the driver's side, and two men exited by the Jeep's rear door. The two men then jumped a fence into the backyard of the Peraza residence. When the neighbor later saw the same two men knocking on a door four houses away, she called the police and gave a description of the two men and defendant. The police soon arrived, arrested the three suspects, and determined that an illegal entry had been made into the Peraza residence through a bathroom window. At the time of her arrest, defendant was in the driver's seat of the 2008 tan/gold Jeep Patriot registered in her name. From the interior of the Jeep, the police recovered an assortment of jewelry and other property, including 22 pieces of jewelry which belonged to Rickerby.

During an interview by the police following her arrest, defendant claimed that she had only recently met the two men, one of whom asked her, as a favor, to help him pick up a friend. The man directed defendant to a house, told her to knock on the door and ask for "Megan." When no one answered, she claimed the man said it was the wrong house and directed defendant to another, where she again went to the door, knocked, and returned to her car when no one answered. Defendant claimed then that the two men went to the door, but she did not pay attention to what they were doing.

DISCUSSION

I. Restitution under section 1202.4

Defendant contends that the trial court erred in ordering her to pay restitution for the value of the unrecovered jewelry stolen from Rickerby. Defendant argues that the restitution ordered here was precluded by section 1202.4, because she was not convicted of the Rickerby burglary, and because Rickerby's loss was not the *result* of the crime for which she was convicted, receiving the stolen property.

Section 1202.4, subdivision (a)(1) states: "It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime." Restitution is governed by section 1202.4 when a criminal defendant is convicted and *sentenced to state prison*. (*People v. Martinez* (2017) 2 Cal.5th 1093, 1097 (*Martinez*)). Here, defendant was placed on probation. When restitution is ordered as a condition of probation, the imposition of restitution is governed by section 1203.1, which gives courts broad general discretion to fashion and impose conditions of probation. (*People v. Anderson* (2010) 50 Cal.4th 19, 28-29.)

Section 1202.4 carries more restrictive causation requirements than section 1203.1. (See *Martinez, supra*, 2 Cal.5th at pp. 1100-1102.) Under section 1202.4, a restitution award "depends on the relationship between the victim's loss and the defendant's crime," and is meant "to fully reimburse the victim or victims for every determined economic loss incurred as the *result* of the defendant's criminal conduct.' [Citation.]" (*Martinez*, at pp. 1097-1098, 1101, italics added; see § 1202.4, subds. (a)(1), (f)(3).) On the other hand, "[i]n granting probation [under section 1203.1], courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety,'

including the power to ‘regulate conduct “not itself criminal”’ but “reasonably related to the crime of which the defendant was convicted or to future criminality.” [Citations.] This discretion . . . has long been held to include the power to order restitution ‘even when the loss was not necessarily caused by the criminal conduct underlying the conviction,’ including in cases in which ‘the loss was caused by related conduct not resulting in a conviction [citation] . . .’ [so long as] ‘the trial court finds such restitution will serve’ the purposes of probation. [Citation.]” (*Martinez*, at p. 1101.)

Although defendant was granted probation in this case, she contends that the restitution award was not imposed as a condition of probation, because the trial court stated that the statute governing restitution was section 1202.4, and the minutes state that restitution was ordered pursuant to section 1202.4, subdivision (f). In fact, the trial court stated that section 1202.4 governed the issue of whether restitution may be ordered for noneconomic damages, and the court concluded that under section 1202.4, subdivision (f)(3)(A), it could not. “As a broad general proposition, cases have stated that a trial court’s remarks in a bench trial cannot be used to show that the trial court misapplied the law or erred in its reasoning. [Citations.]” (*People v. Tessman* (2014) 223 Cal.App.4th 1293, 1302.)

Regardless, whatever the trial court and the court clerk thought was the basis of the court’s authority, the record clearly shows that the restitution order was imposed as a condition of probation. First, the trial court did not impose prison or jail custody. Pursuant to the original plea agreement, defendant was to receive a jail term which would run concurrently with any term imposed in her Orange County case. Because in Orange County defendant was placed on probation, the court and the parties in this case agreed to a disposition of three years of

formal probation, conditioned upon electronic monitoring, community service, *and* restitution to be determined after sentencing. The probation report included restitution in its list of recommended conditions of probation. When the trial court pronounced the conditions of probation it began with victim restitution, ordering that it be collected by the probation department, and then the court immediately read the remaining conditions.

Assuming section 1202.4 governs here, rather than section 1203.1, defendant's argument has no merit. The requirement of section 1202.4 that the victim's loss *result* from the defendant's criminal conduct does not require direct or actual causation, but proximate causation, or whether defendant's criminal conduct was a "substantial factor" in producing the harm. (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320-1321 (*Holmberg*).) "The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical." [Citation.]" (*Id.* at p. 1321.)

"On appeal, we review a restitution award for abuse of discretion. [Citations.] The award must be supported by sufficient evidence under the substantial evidence standard of review. [Citations.] 'We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact.' [Citation.]" (*People v. Jessee* (2013) 222 Cal.App.4th 501, 507.) The issue is thus whether substantial evidence supports a finding that defendant's criminal conduct made a contribution to the loss of the unrecovered jewelry which was more than negligible or theoretical. (See *Holmberg, supra*, 195 Cal.App.4th at p. 1321.)

In *Holmberg*, the defendant was convicted of receiving stolen property which had been taken in the course of several

burglaries. He made an argument similar to the one made by defendant, denying that he participated in the burglaries and asserting that the victims' losses were not proximately caused by his crime of receiving stolen property, because the losses were due to the burglaries, which would have occurred even without his criminal conduct. (*Holmberg*, 195 Cal.App.4th at pp. 1317, 1322.) The appellate court determined that the defendant's conduct made more than a negligible or theoretical contribution to bringing about the victims' losses, noting that the defendant obtained the property on the day it was stolen, knowing it was stolen, and he then concealed it for more than a week, rather than contacting law enforcement to return it. (*Id.* at p. 1322.)

Similarly here, defendant admitted her possession of the stolen jewelry recovered on the day of her arrest, but denied involvement in the burglaries. Nevertheless, substantial evidence connected her to the Rickerby burglary. Defendant did not refute or deny the facts considered by the trial court in granting restitution, and does not do so here, despite drawing her own inferences from them. We reject defendant's suggestion that the evidence that the SUV at the Rickerby residence belonged to defendant was weak, and that the police merely *assumed* that there were three people in the SUV. A gold Jeep similar to defendant's was seen in the surveillance video, and although a third occupant could not be seen, the Jeep was backed up to the front of the house after two occupants got out. The Jeep was then driven away immediately after the same two people reentered it. The most reasonable inference was a getaway driver was present, not that the car was self-driving. The circumstances of the Rickerby burglary and the Peraza burglary one month later were so similar as to suggest a pattern of conduct involving the same actors, including defendant.

A necessary element of the offense of receiving stolen property is actual knowledge that the property was stolen. (*People v. Tessman*, *supra*, 223 Cal.App.4th at p. 1302; § 496, subd. (a).) When defendant pled no contest to the charge, she did not refute the elements of the crime. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) Since we conclude defendant knew of the stolen nature of the Rickerby jewelry in her car on the day of the Peraza burglary, and the circumstances suggest that defendant was the getaway driver on both occasions, it is reasonable to infer that the jewelry for which restitution was ordered, was in her car for some time during which she knew it had been stolen. However, like the defendant in *Holmberg*, defendant did not return the stolen jewelry, but kept it in her car. (Cf. *Holmberg*, *supra*, 195 Cal.App.4th at pp. 1317, 1321-1322.)

In sum, substantial evidence supports a finding that defendant's criminal conduct made more than a negligible or theoretical contribution to bringing about the victim's losses. Thus, even if defendant had been sentenced to prison rather than probation, an award under section 1202.4 would not have been improper.

II. Restitution under section 1203.1

Defendant contends that the restitution award was an invalid condition of probation, because it was not reasonably related to her offense or to the deterrence of future criminality.

“Generally, “[a] condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.]” [Citation.] This test is conjunctive -- all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has

no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.’ [Citations.]” (*People v. Moran* (2016) 1 Cal.5th 398, 403, quoting *People v. Olguin* (2008) 45 Cal.4th 375, 379-380.) We review the probation condition for an abuse of discretion, and the trial court’s determination will be upheld unless it “is arbitrary or capricious” or ““exceeds the bounds of reason, all of the circumstances being considered.” [Citations.]’ [Citation.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

We have determined above, that the restitution condition bore a substantial relationship to defendant’s offense of receiving stolen property. We now reject defendant’s contention that ordering a defendant convicted of receiving stolen property to make restitution for property stolen by someone else cannot be reasonably related to the legitimate purposes of deterrence or rehabilitation. “[A]n order for restitution, i.e., attempting to make a victim whole, has generally been deemed a deterrent to future criminality [citation], and the court is not limited to the transactions or amounts of which defendant is actually convicted [citations].” (*People v. Lent* (1975) 15 Cal.3d 481, 486.) Section 496, subdivision (a), “is directed at those who knowingly deal with thieves and with their stolen goods after the theft has been committed . . . in order to provide the thieves with a . . . depository for their loot.” (*People v. Tatum* (1962) 209 Cal.App.2d 179, 183.) As such, a receiver of stolen property assists the thief, and a restitution order in such cases serves the rehabilitative purpose of impressing on the defendant that a consequence of receiving the thief’s stolen property will be liability for the victim’s losses.

We discern nothing arbitrary or capricious in the trial court’s restitution award in this case.

DISPOSITION

The restitution order is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST