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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.

RACIEL MATEOS,

Defendant and Appellant.

2d Crim. No. B280190  
(Super. Ct. No. BA395657)  
(Los Angeles County)

Raciel Mateos appeals an order imposing \$16,635 in victim restitution as a condition of probation after his convictions for driving with a blood alcohol level over 0.08 percent and misdemeanor hit and run. (Veh. Code, §§ 23152, subd. (b), 20002, subd. (a).) Mateos contends there is insufficient evidence to support the restitution award. We affirm.

**BACKGROUND**

While under the influence of alcohol, Mateos drove his car into the back of another car. Janet Gonzalez was driving the other car. Her passengers were Rebecca Vasquez, Yesenia Pineda, and Ismael Guzman. Mateos pled no contest.

At sentencing, the prosecutor announced he would seek victim restitution. The court sentenced Mateos to probation with terms including 66 days in jail and payment of victim restitution.

At the restitution hearing, Gonzalez, Vasquez, Pineda, and Guzman testified that they suffered pain after the accident. They were treated by Total Care Medical Center (Total Care) after an attorney referred them to that health care provider. The victims did not pay Total Care's bills or expect to do so. The prosecution offered the billing statements for each victim named above and withdrew a request for restitution for a person who the driver testified was not in the car. The court deducted from each bill \$240 for preparation of medical reports and ordered Mateos to pay the remainder to Total Care.

#### DISCUSSION

Mateos acknowledges that his victims are entitled to restitution, but he contends the amount is unsupported. He points out the losses were not identified in the preplea probation report and no health care providers testified. He questions the accuracy of Total Care's statements, which included treatment of a person who was not in the car and services rendered on dates the victims did not recall. He contends the statements are the product of a personal injury scam.

Victims of crime are entitled to restitution for their economic losses. (Cal. Const., art. I, § 28, subd. (b); Pen. Code, § 1202.4, subd. (a)(1).) The amount is "based on the amount of loss claimed by the victim or victims or any other showing to the court." (Pen. Code, § 1202.4, subd. (f).) The standard of proof is preponderance of the evidence. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542 (*Gemelli*).) We review the award for

abuse of discretion and affirm if “there is a rational and factual basis for the amount of restitution ordered.” (*Ibid.*)

The trial court’s order was rationally based on victim testimony and billing statements. The court credited the victims’ testimony, “look[ed] at each of the bills,” found nothing unusual about the chiropractic treatment or charges, and disallowed the cost of preparing medical reports because “that’s not treatment.” It did not award restitution for the person who was not in the car.

The court did not abuse its discretion when it ordered restitution that was not expressly identified in the preplea report. The preplea probation report states “N/A” in the box for the victims’ “property loss,” and “According to the district attorney’s packet, there are no victims in this case.” But elsewhere, the same report refers to the victims: “[D]efendant attempted to leave the scene of an accident. However, the victims stopped him.” And when Mateos entered his plea he acknowledged, “I will also be ordered to make restitution . . . .” He does not dispute that the victims are entitled to restitution, he cites no authority requiring notice in the preplea report, he did not seek to withdraw his plea, and the court allowed him 60 days to prepare for the restitution hearing after the prosecutor announced he would seek restitution.

Mateos questions the reliability of Total Care’s statements, but we do not reweigh or reinterpret the evidence. (*Gemelli, supra*, 161 Cal.App.4th at pp. 1545-1546.) In the trial court Mateos argued the statements were unreliable because the victims could not recall being treated on the dates set forth in Total Care’s statements. Mateos argues it is “undisputed” that none of the victims were treated the day after the accident. But the testimony was equivocal. Gonzalez said it was “more like two

weeks later,” but also said the dates on the Total Care statement were “correct,” and “[t]o be honest, I don’t remember . . . [¶] . . . this was what, four years ago.” Vasquez said the dates on Total Care’s statement were accurate but she does not remember the exact dates she had treatment. Pineda said, “I don’t recall the date how long it took me to go.” Guzman could not recall the dates he had therapy.

The victims’ limited memory did not undermine the trial court’s confidence in Total Care’s statements. The court said, “It’s four years ago. That’s not an issue.” The billing statements alone were sufficient to support the award. The trial court has virtually unlimited discretion as to the kind of information it may consider when ordering restitution. (*People v. Phu* (2009) 179 Cal.App.4th 280, 283.)

The trial court rejected Mateos’s arguments that the statements are the fraudulent product of a personal injury lawyer’s scam, that the victims believed their attorney was taking care of the bills, and that there was no evidence the statements remained unpaid. The court responded: “This is not unusual, for someone to be involved in an accident, to go to a lawyer and then the lawyer refers them to a doctor and/or chiropractor. . . . It is typical whiplash, soft tissue type litigation.” The court concluded, “These individuals who testified incurred medical expenses, albeit they haven’t paid it, they incurred medical expenses and each of the bills threaten[] them with lawsuits as a result of the deficient bill.” Its conclusion was not arbitrary or capricious and we will not disturb it. (*Gemelli, supra*, 161 Cal.App.4th at p. 1542.)

DISPOSITION

The order is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Dorothy B. Reyes, Judge

Superior Court County of Los Angeles

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