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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MANUEL JESUS SERRANO, Defendant and Appellant.	B284934 (Los Angeles County Super. Ct. No. YA096127)

APPEAL from an order of the Superior Court of Los Angeles County, Thomas R. Sokolov, Judge. Affirmed in part and reversed in part with directions to modify the judgment.

Lenore De Vita, 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, Susan Sullivan Pithey and Robert M. Snider, Deputy Attorneys General, for Plaintiff and Respondent.

Manuel Jesus Serrano (Serrano) appeals from a restitution order imposed as a condition of probation after Serrano pleaded guilty to grand theft. The issue before us is whether substantial evidence supported the trial court's award of restitution for stolen golf clubs, handbags, cash, and television sets, as well as its award for repair costs to the victim's damaged vehicle. With the exception of the handbags and golf clubs, we conclude substantial evidence supported the trial court's award and thus affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

On the night of Sunday May 7, 2017, J.C., a medical doctor, noticed that the entrance key to his office had been stolen. When J.C. returned to his business the next day, he discovered that his office had been burglarized and his car, a Range Rover, was missing. J.C. called the police and reported that his car, two television sets, a set of golf clubs, and a safe containing $10,000 had been stolen from his business. Gardena police officers located J.C.'s vehicle that day and detained the occupants—one of whom was Serrano. Serrano admitted to the police that he was the lookout while his friend broke into J.C.'s office and stole J.C.'s personal items.

On May 10, 2017, in an information, the People charged Serrano with driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a); count 1) and with felony grand theft of personal property exceeding $950 in value (Pen. Code, § 487, subd. (a); count 2).

On May 16, 2017, J.C. called the Gardena Police Department to report additional items that were missing. He informed them that the following items had been stolen from his

office: 12 handbags; two televisions, one valued at $1,800 and another at $800; two sets of golf clubs valued at $9,000 each; a safe containing $10,000 in silver and $3,000 in cash; five to six business suits valued at $300 each; and 20 pieces of clothing valued at $6,000. J.C. also reported damage to the ignition in his vehicle in the amount of $600 to $700.

On June 14, 2017, Serrano pleaded no contest to count 2 and the People dismissed count 1.[1] Serrano had been accepted into the offender drug court program, where he would be sentenced after the completion of the restitution hearing.[2]

At the restitution hearing on July 27, 2017, J.C. testified that the following items were stolen from his office: two televisions; two golf bags containing sets of clubs; a safe containing cash, silver coins, a checkbook, and a prescription pad; five or six women's handbags; and five or six men's suits. In addition, his car's ignition was damaged and the vehicle's logo sign was spray painted.

J.C. testified that he had paid approximately $1,200 for each television, which he bought two years earlier at Sam's Club and which were attached to the walls of his office.

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[1] The abstract of judgment indicates Serrano was convicted of Vehicle Code section 10851, subdivision (a), which is incorrect. Serrano pled guilty to Penal Code section 487, subdivision (a), not Vehicle Code section 10851. We therefore direct the trial court to correct the abstract of judgment to reflect that Serrano was convicted of felony grand theft of personal property exceeding $950 in value, count 2, Penal Code section 487, subdivision (a).

[2] Serrano ultimately refused treatment through the offender drug court program and was sentenced to 16 months in state prison on August 29, 2017.

When asked by the trial court how many sets of golf clubs were taken in the burglary, J.C. replied, "Maybe about four sets maybe." When asked by defense counsel shortly thereafter how many sets of clubs were missing, he replied, "Altogether about four. Four. Maybe four, five sets. [¶] . . . [¶] Four or five because I had a bunch—you know, my son's bag. Old bag you know." When asked by defense counsel why he only reported two missing sets to the police, he replied, "I didn't realize it was all lost like that. I don't know exactly how many bags I had there at the time." J.C. testified that two of the four or five missing sets of golf clubs were in his car when it was recovered, but that those belonged to his son.

The two golf bags that were stolen from his office were not recovered, and they belonged to him and his wife. J.C. further testified that those sets of clubs were worth "maybe about six, seven thousand each." "The iron set cost maybe about two, three thousand," he said, "[a]nd you know wood drivers cost that much." When asked by the court what he thought the clubs were worth, J.C. replied, "Two bags and clubs maybe about—it's hard to say. It's used." J.C. reported that he had the clubs for "maybe about" eight years. When asked by the court how much he had paid for the golf clubs, J.C. replied, "Probably five, six thousand the whole—the iron—the wood is expensive. It's Hallmark."[3]

J.C. initially testified that he did not know how much his wife paid for the handbags, but estimated about $300 for each.

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[3] It is unclear from the record whether J.C. was indicating that Hallmark was the brand of the golf clubs themselves, or merely the wood. His testimony seems to suggest he was referring to the wood drivers; however, the People later referred to them as "Hallmark golf clubs."

When asked whether he knew the brand of the bags, J.C. replied, "I cannot recall the name. Maybe Chanel or something like that." The trial court asked J.C. to call his wife in the hallway outside the courtroom. When J.C. returned, he testified that his wife reported she lost "about six" bags, and that she had paid between $350 to $400 for each. She did not remember specifically which bags were taken, nor did she remember their brands.

With respect to the stolen suits, J.C. testified that "about five, six" were taken. He did not remember how much he paid for the suits. When the People asked him to approximate, he replied, "Each suit costs probably $300 each." J.C. did not describe the suits or name their brands.

J.C. testified that his vehicle was returned with damage to the ignition area, and spray paint on the body of the car. J.C. had not repaired his car in the two months since the burglary, nor did he get an estimate for the cost of repairs. When asked by the court to give a car repair "guesstimate," J.C. replied, "[t]o repaint maybe $1,000."

With respect to the amount of cash in the stolen safe, J.C. testified to "maybe six, seven hundred [dollars]. I don't know exactly." J.C. testified that he purchased the silver coins approximately 14 years before the burglary for "about" $3,000, and testified that "[m]aybe about now it's worth about $5,000."

When the People asked J.C. whether he spoke with the probation department about how much money he should be getting in restitution, J.C. testified that he never discussed it with the department. The People asked J.C. whether he had "a number in mind," and he replied, "No. I don't have receipts. So I don't know how I can ask for [sic]." Upon further questioning,

J.C. testified his monetary loss amounted to "I would imagine about 15, 20 thousand."

The People argued that the statement of a crime victim as to the value of stolen property constitutes a prima facie case for the purposes of restitution, irrespective of any receipts or pictures of the items.

Defense counsel argued that J.C. had taken no steps to determine the value of the silver coins, the golf bags, the televisions, or the women's handbags, and had failed to get an estimate for the damage to his vehicle. Defense counsel further asserted that, without an estimate of the cost to repair J.C.'s vehicle; without receipts or certificates for the silver coins; and without receipts, pictures, or the names of the purses and golf clubs, it was "not possible" to determine the value of J.C.'s losses. Defense counsel submitted that, without further documentation, "restitution should be denied."

The trial court found J.C. a credible witness and ordered restitution as follows: $1,500 for both televisions; $600 cash; $2,100 for the handbags; $1,000 for the spray paint damage to the vehicle; and $5,000 for the two missing sets of golf clubs.[4] The trial court observed with respect to the golf clubs, "[J.C.] said they were worth about $5,000 each. . . . [b]ecause of the age of the clubs the court is valuing them at $2,500 each."

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[4] The trial court did not award restitution for the silver coins or the suits. As the People do not challenge the trial court's restitution award on appeal, we do not address the trial court's decision to exclude these items from the restitution order.

DISCUSSION

I. Relevant legal principles and standard of review

In 1982, California voters passed Proposition 8, also known as The Victims' Bill of Rights. The purpose of the measure was to assist those victimized by crime and, with respect to restitution, to make victims economically whole. Proposition 8 enshrined the right to restitution in our Constitution, which states, "[i]t is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer." (Calif. Const., art. I, § 28, subd. (b).)

Over the years, the Legislature codified this constitutional mandate in various incarnations; today, the bulk of the restitution scheme resides in Penal Code section 1202.4. Subdivision (f) 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." Subdivision (f) requires the court to "order full restitution." (Calif. Const., art. I, § 28, subd. (b).)

A victim's right to restitution " ' " 'is to be broadly and liberally construed.' " ' " (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.) Restitution hearings do not require the formalities of other phases of a criminal prosecution, therefore " ' " 'judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.' " ' " (*People v. Hove* (1999) 76 Cal.App.4th 1266, 1275.) Nor are the " 'rigorous procedural safeguards required during the

guilt phase' " also required at a restitution hearing. (*People v. Foster* (1993) 14 Cal.App.4th 939, 947, superseded by statute on another point as stated in *People v. Millard* (2009) 175 Cal.App.4th 7, 42.)

Thus, a defendant's due process rights are protected when he or she is given notice in the probation report of the amount sought and a hearing[5] to contest the claimed loss. (*People v. Millard, supra,* 175 Cal.App.4th at p. 42*; People v. Selivanov* (2016) 5 Cal.App.5th 726, 783.) No particular kind of proof is required to establish the value of lost property, and a victim's statements in a probation report as to the value of stolen or damaged personal property often constitutes prima facie evidence. (*Foster*, at p. 948; *People v. Prosser* (2007) 157 Cal.App.4th 682, 684.) The burden then shifts to the defendant to prove that the amount claimed by the victim exceeds the cost to repair or replace the lost or damaged property. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.)

The court's restitution order "shall identify . . . each loss . . . and shall be of a dollar amount that is sufficient to fully reimburse the victim . . . for every determined economic loss incurred as the result of the defendant's criminal conduct." (Pen. Code, § 1202.4, subd. (f)(3).) With respect to stolen or damaged property, the value "shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible." (Pen. Code, § 1202.4, subd. (f)(3)(A).)

In calculating the restitution award, " ' "the trial court must use a rational method that could reasonably be said to

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[5] A defendant has "the right to a hearing before a judge to dispute the determination of the amount of restitution." (Pen. Code, § 1202.4, subd. (f)(1).)

make the victim whole, and it may not make an order which is arbitrary or capricious." ' " (*People v. Martinez* (2017) 10 Cal.App.5th 686, 721, quoting *People v. Mearns* (2002) 97 Cal.App.4th 493, 498; accord *People v. Giordano* (2007) 42 Cal.4th 644, 665 [no abuse of discretion "as long as the determination of economic loss is reasonable, producing a nonarbitrary result"].)

The standard of review of a restitution order is abuse of discretion. (*People v. Giordano*, *supra*, 42 Cal.4th at p. 663.) No abuse of discretion will be found if there is a factual and rational basis for the amount of restitution ordered by the trial court. (*People v. Martinez*, *supra*, 10 Cal.App.5th at p. 721.) In determining whether there is a factual basis for the order, the " ' " 'power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the trial court's findings." ' " (*People v. Millard*, *supra*, 175 Cal.App.4th at p. 26.) The judgment may not be overturned if the circumstances "reasonably justify" the trial court's findings. (*Ibid.*) And, 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.' " (*Ibid.*) Our discussion below thus focuses on whether substantial evidence supported the trial court's restitution award.

II. Merits

J.C.'s statements in the probation report and at the restitution hearing as to the original cost and present value of the items lost or damaged in the burglary were the only evidence upon which the court based its restitution award. On appeal, Serrano argues there was insufficient evidence of the value of the

damaged or stolen items to support the court's estimate of J.C.'s losses, resulting in an arbitrary, inconsistent restitution order that lacked any rational design. The People contend that J.C.'s testimony provided competent evidence that was "more than adequate" to support the restitution order, and that a victim's testimony about the original cost of lost or damaged property is sufficient to support an award of restitution.

In many, if not most cases, a victim's statement of economic loss is sufficient evidence upon which the court may calculate an appropriate restitution award. There are sound policy reasons for allowing such statements to constitute prima facie evidence. As articulated in *People v. Prosser*, *supra*, 157 Cal.App.4th at page 691, for example, "[a] victim who has no receipts or appraisals for property received by gift, and who no longer has possession of the property, may have no way of providing a detailed description or obtaining an appraisal." The court in *Prosser* saw no reason why "the thief, who has, or last had, possession of the property, should not bear the burden of rebutting the victim's estimate of value." (*Ibid.*) Nor do we.

On the other hand, a defendant "is not required" to meet his or her burden to refute the claimed loss "until the replacement or repair cost of the victim's property is established." (*In re Travis J.* (2013) 222 Cal.App.4th 187, 204.) In order to establish the repair or replacement cost of an item of personal property, a defendant must have enough information about the basic characteristics of the items to be able to rebut the victim's estimates whether the estimates are contained in a probation report or provided during the restitution hearing.

With respect to the golf clubs, J.C. testified he lost "four or five" sets of bags and clubs, but was not sure because he did not

know how many sets of clubs were in his office when it was burglarized. J.C. gave no clear statement of the make or model of any of the missing sets of clubs. He stated the wood drivers were "Hallmark," but did not clarify whether this was also the brand of all the clubs. Furthermore, J.C. initially told the police that he had lost two sets valued at $9,000 each. At the restitution hearing, he first testified they were worth "maybe about" $6,000 to $7,000 each, but later stated that he paid "probably" $5,000 to $6,000 for each set. J.C.'s vague and inconsistent descriptions of the golf clubs do not constitute substantial evidence supporting the trial court's award regarding the golf clubs.

The same is true for the trial court's award of restitution for the handbags. J.C. testified that his wife did not even know which handbags were missing, much less their brands. It was therefore unreasonable to expect that Serrano could even begin to investigate the validity of J.C.'s claim that each of the six handbags was worth $350. Thus substantial evidence did not support the $2,100 in restitution the trial court awarded for the handbags.

We do not suggest that Penal Code section 1202.4, subdivision (f), and the policy considerations underlying it, compel trial courts to require rigorous proof of a victim's losses in order to establish a prima facie case for restitution. We recognize that the People's burden is minimal, to wit, to provide enough information about the basic characteristics of the victim's claimed loss to enable the defendant to mount a meaningful rebuttal.

With respect to J.C.'s vehicle, J.C. provided a "guesstimate" that it would cost approximately $1000 to repair the paint damage to a Range Rover, a luxury vehicle. Although J.C. did not get an estimate, Serrano was in the vehicle when it was

located by the police. Serrano therefore had enough information about the make and model of the car, as well as the claimed injury, to rebut J.C.s estimated cost of repair.

With respect to the television sets, J.C. provided the age and original prices of the television sets, and testified they were hanging on the wall of his office. This provided Serrano with enough information to rebut J.C.'s estimate, and constitutes substantial evidence to support the restitution award for these items.

DISPOSITION

The order is reversed as to the $2,100 award for the handbags and the $5,000 for the sets of golf clubs. In all other respects, the order is affirmed. The superior court is directed to correct the abstract of judgment to reflect that Manuel Jesus Serrano was convicted of the commission of the following felony: felony grand theft of personal property exceeding $950 in value, count 2, Penal Code section 487, subdivision (a). The superior court is also directed to prepare an amended restitution order and abstract of judgment and forward a copy of the amended order and abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J. BENDIX, J.