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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.

RYAN MARTINEZ,

Defendant and Appellant.

B287606

(Los Angeles County  
Super. Ct. No. TA144079)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sean D. Coen, Judge. Affirmed as modified.

Marta I. Stanton, 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, Senior Assistant Attorney General, Jason Tran, Supervising Deputy Attorney General, Stephanie C. Santoro, Deputy Attorney General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant and appellant Ryan Martinez pleaded no contest to grand theft of an automobile (Pen. Code, § 487, subd. (d)(1)) and identity theft (Pen. Code, § 530.5, subd. (a)). The trial court placed defendant on formal probation for five years on various terms and conditions, including the condition he serve 365 days in county jail.

The trial court held a victim restitution hearing at which it awarded restitution in the amount of \$23,420.66. Defendant appeals from the calculation of that award. The People concede the error. We order the judgment modified to reflect a restitution award in the amount of \$22,990.63.

## BACKGROUND<sup>1</sup>

Defendant rented U-Haul vehicles from U-Haul facilities throughout Los Angeles County using prepaid credit cards and fictitious names. Defendant failed to return and abandoned the vehicles. He later contacted U-Haul and informed it that his towing company, Hook and Book Towing, had recovered and impounded U-Haul's vehicles. He demanded money from U-Haul for towing the vehicles and storage fees.

At the restitution hearing, Daniel Guerrero, U-Haul's field relief manager, testified about U-Haul's losses resulting from its contracts with defendant and defendant's criminal conduct. U-Haul lost \$8,291.58 (this amount included a \$935 towing fee) on contract no. 24912016; \$3,844.60 on contract no. 82712024; \$1,597.72 on contract no. 84468492; \$504.97 on contract

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<sup>1</sup> Because defendant pleaded no contest prior to the preliminary hearing, we take the facts underlying his convictions from the Probation Officer's Report.

no. 26288255; \$1,788.49 on contract no. 26566073; \$675.11 on contract no. 26641940; \$987.93 on contract no. 27635441; and \$661.47 on contract no. 27694283. Those losses totaled \$18,351.87.

## DISCUSSION

Defendant contends the trial court miscalculated the victim restitution award by double counting one restitution claim and omitting another.<sup>2</sup> The People agree, as do we.

At the conclusion of the victim restitution hearing, the trial court reviewed the evidence and awarded \$18,781.90 in restitution. In reaching that total, the trial court erroneously awarded the \$935 towing fee associated with the loss on contract no. 24912016 twice. The trial court first awarded the \$935 towing fee separately. Then, it awarded the fee as part of the \$8,291.58 loss on the contract. The trial court also inadvertently omitted the \$504.97 loss associated with contract no. 26288255. The trial court's miscalculations erroneously increased the award by the net amount of \$430.03. As stated above, the correct award based on the evidence presented at the hearing was \$18,351.87. That amount, added to parties' unchallenged, stipulated award of \$4,638.76 would have resulted in a victim restitution award of \$22,990.63. We order the judgment modified accordingly.

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<sup>2</sup> Citing *People v. Martinez* (2017) 10 Cal.App.5th 686, 722 and *People v. Anderson* (2010) 50 Cal.4th 19, 26, the People point out that defendant did not forfeit this issue by failing to object in the trial court as duplicate restitution awards are unauthorized sentences.

### **DISPOSITION**

The judgment is ordered modified to reflect a victim restitution award of \$22,990.63. In all other respects, the judgment is affirmed.

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JASKOL, J.\*

We concur:

BAKER, Acting P. J.

MOOR, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.