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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.

DANISHA IRVIN,

Defendant and Appellant.

B275669

(Los Angeles County
Super. Ct. No. NA093827)

APPEAL from an order of the Superior Court of Los Angeles County. Richard R. Romero, Judge. Affirmed.

Pamela J. Voich, 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, Kenneth C. Bryne and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Danisha Irvin appeals following her plea of no contest to one count of battery and one count of dissuading a witness. She argues the trial court abused its discretion by imposing restitution of \$10,279.58 in medical fees incurred by a victim because there was no evidence that defendant committed a crime as to that victim. We uphold the restitution award because the order was reasonably related to defendant's conviction and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because this appeal comes to us following a plea, there is no trial evidentiary record. The record we do have omits both the preliminary hearing transcript and the plea colloquy. To the extent additional facts might have been helpful to defendant, we observe that the burden is on defendant, as appellant, to provide an adequate record and affirmatively to demonstrate error.

(People v. Sanghera (2006) 139 Cal.App.4th 1567, 1573 (*Sanghera*).) As to undisputed facts, we rely on counsel's characterization of the evidence.

Defendant and Christopher Johnson were in a car waiting to exit a parking lot when Johnson became upset with the car in front of them. He got out and approached the front car. A man then exited the front car with a knife, and he and Johnson engaged in a physical altercation. Two women proceeded to get out of the front car. One of them, Rachelle Campbell, joined in the altercation with Johnson and was injured. At some point, defendant exited the rear car and Alexandria Deleon exited the front car. Defendant and Deleon engaged in a physical altercation.

Defendant pled no contest to battery as to Deleon. Johnson entered the same plea to assault on Campbell.¹ Defendant was placed on three years probation. Following a restitution hearing, the court concluded that in addition to restitution for economic losses suffered by Deleon, defendant should be held responsible for Campbell's injuries, finding that defendants had "aid[ed] each other" in "a joint assault against two victims." The court imposed restitution of \$10,279.58—the costs of Campbell's medical expenses for injuries incurred during the fight—and ordered that defendant and Johnson be jointly and severally responsible for that amount. Defendant timely appealed.

DISCUSSION

Defendant contends the trial court abused its discretion in ordering her to pay for Campbell's medical expenses because such restitution was unrelated to defendant's battery conviction as to Deleon. We disagree.

"The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions. [Citations.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*)). "In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citations.]" (*Id.* at pp. 1120–1121.) "[A] condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime

¹ Defendant also pled no contest to dissuading a witness but makes no argument about that count. Accordingly, we do not mention it further. Nor is Johnson involved in this appeal. We discuss him only for the purpose of explaining the underlying altercation.

of which the defendant was convicted or to future criminality.’
[Citation.]” (*Id.* at p. 1123.)

“Restitution has long been considered a valid condition of probation. [Citation.] [] [S]ection 1203.1 requires trial courts to ‘consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund,’ and requires the court to ‘provide for restitution in proper cases.’ [Citation.]” (*Carbajal, supra*, 10 Cal.4th at p. 1121.) “That a defendant was not personally or immediately responsible for the victim's loss does not render an order of restitution improper.” (*In re I. M.* (2005) 125 Cal.App.4th 1195, 1210.) To the contrary, “California courts have long interpreted the trial courts’ discretion to encompass the ordering of restitution as a condition of probation even when the loss was not necessarily caused by the criminal conduct underlying the conviction. Under certain circumstances, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction (*People v. Miller* [(1967)] 256 Cal.App.2d [348,] 355–356 [(*Miller*)]), by conduct underlying dismissed and uncharged counts (*People v. Goulart* (1990) 224 Cal.App.3d 71, 79 [(*Goulart*)]), and by conduct resulting in an acquittal (*People v. Lent* [(1975)] 15 Cal.3d [481,] 483 [(*Lent*)]).” (*Carbajal, supra*, 10 Cal.4th at p. 1121.)²

In *Miller*, the defendant was convicted of fraud in connection with his business but ordered to pay restitution, in

² The plea sentence here does not implicate a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754), by which a defendant affirmatively agrees to restitution on a dismissed count as part of a plea bargain that results in the dismissal of that count. Here, defendant was not charged with assault as to Campbell, and no count against her was dismissed.

part, based on breach of contract claims that also arose out of the operation of his business. (*Miller, supra*, 256 Cal.App.2d at pp. 350–351.) In *Goulart*, the defendant was sentenced to probation subject to his paying restitution, in part, for thefts that occurred prior to the conduct underlying his conviction. The court concluded that restitution was not limited by the *Harvey* waiver and could include restitution for similar acts that were barred by the statute of limitations and never charged. (*Goulart, supra*, 224 Cal.App.3d at pp. 77–79.) In *Lent*, the defendant was ordered to pay restitution arising from, in part, a theft charge of which he was acquitted. (*Lent, supra*, 15 Cal.3d at pp. 483–484.) In each of these cases, the appellate court affirmed finding that the restitution was reasonably related to the defendant’s conviction or future criminality. (*Miller*, at p. 356; *Goulart*, at p.79; *Lent*, at p. 487.)

Here, we conclude the trial court did not abuse its discretion by imposing restitution of Campbell’s medical expenses as a condition of defendant’s probation. Although, as defendant argues, Campbell’s injuries apparently were not directly caused by the conduct underlying defendant’s battery conviction, those injuries were reasonably related to that criminal offense. The court found that defendant attacked Deleon in order to help Johnson with his assault of Campbell: defendants “aid[ed] each other” in “a joint assault against two victims.” We acknowledge there may have been a brief temporal lag between the time of Campbell’s injuries and defendant’s battery on Deleon, but do not find that dispositive. In light of the strong public policy behind restitution orders, the trial court did not abuse its discretion in concluding that defendant’s conduct was part of a single incident

in which both Campbell and Deleon suffered losses; this was essentially one incident.

Defendant disputes the court's finding of a joint assault, arguing that she did not encourage Johnson to fight with Campbell, and "more than likely" was "trying to stop any more fighting and diffuse the situation." The record is insufficient to support her argument: as we have observed, the record does not contain any of the evidence from the preliminary hearing or colloquy from the plea, only counsel's characterization of the evidence at the restitution hearing. Appellant, thus, has not met her factual burden on appeal. (*Sanghera, supra*, 139 Cal.App.4th at p. 1573.)

Finally, defendant's conviction for battery established that she did not act to diffuse the situation but rather joined in an ongoing fight with the occupants of the front car. Accordingly, the restitution order with respect to Campbell's injuries was reasonably related to defendant's battery against Deleon. (See *People v. Campbell* (1994) 21 Cal.App.4th 825, 834 [" "Where two or more persons act in concert, it is well settled both in criminal and in civil cases that each will be liable for the entire result." ' [Citation.]"]].)

DISPOSITION

The order is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

SORTINO, J.*

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