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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUSTIN FROLI,

Defendant and Appellant.

A172181

(San Francisco City & County
Super. Ct. No. CRI-23000748)

Defendant and appellant Justin Frolli (appellant) was convicted of receiving stolen property and the trial court awarded restitution of \$34,473 to the owner of the stolen van involved in the offense. We reverse in part, vacating portions of the award for damages that were not caused by appellant's criminal conduct.

PROCEDURAL BACKGROUND

An information filed in July 2024 charged appellant with felony unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and felony receiving stolen property, a motor vehicle (Pen. Code, § 496d, subd. (a)).¹ In August, appellant pled guilty to the receiving a stolen vehicle charge pursuant to a plea agreement. Appellant was sentenced to 16 months in

¹ All undesignated statutory references are to the Penal Code.

prison and ordered to pay restitution of \$34,473 to the owner of the stolen van.

FACTUAL BACKGROUND²

On January 16, 2023, at almost 5:00 p.m., a motorcycle patrol officer observed a 2003 GMC van on a block of Donner Avenue in San Francisco where he had previously recovered numerous stolen vehicles. The van was attached to an auto dolly attached to a pickup. The rear window of the van was smashed.

A records check on the van's license plate revealed it had been reported as stolen. The officer then saw appellant approach the pickup truck, and appellant told the officer he was moving the van for someone.

Appellant was detained. The van's owner (the "victim") said his van was stolen in front of his residence in South San Francisco that morning. The victim was a plumber, and the van had numerous tools inside when it was stolen.

The probation officer's presentence report included the victim's request for restitution in the amount of \$44,057. That amount included: \$12,657 for his lost tools; \$3,800 for pipe fittings and other supplies; \$3,000 for the loss of use of his tools for six days at \$500 per day; \$15,000 for the loss of use of his van; and \$9,600 for lost wages for six days at \$1,600 per day. Following a restitution hearing, the trial court awarded \$34,473 in restitution. That amount included: \$12,073 for lost tools; \$3,800 for lost pipe fittings and supplies; \$5,000 value of the van; \$1,500 for a "special hitch" attached to the van; \$2,500 for the van's "contractor package"; and \$9,600 for loss of use of the van.

² The facts are taken from the preliminary hearing, which was the stipulated factual basis for the plea.

DISCUSSION

Appellant contends the trial court erred in calculating restitution because (1) the missing tools, supplies, and “special hitch” were not attributable to his criminal conduct; and (2) the remainder of the restitution award was not supported by substantial evidence. We agree with the first contention but reject the second.

I. *General Principles of Restitution Law*

Section 1202.4, subdivision (f) provides: “[I]n 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.”

Restitution “shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct.” (§ 1202.4, subd. (f)(3).) “The victim must make a prima facie showing of the loss, which the defendant is entitled to rebut. ‘Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant’s criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim.’” (*People v. Pittman* (2024) 99 Cal.App.5th 1252, 1258 (*Pittman*).)

“ ‘ “The standard of review of a restitution order is abuse of discretion. ‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] ‘ “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” ’ ” ’ ” (*Pittman, supra*, 99 Cal.App.5th at p. 1258.)

II. *Proximate Cause*

Appellant was convicted of receiving the victim's 2003 GMC van as stolen property, not of stealing the van or of receiving stolen tools, supplies, or the van's hitch. Given that criminal conduct, appellant contends the trial court erred in awarding restitution for the lost tools, supplies, and hitch. We agree.

As noted above, section 1202.4 "authorizes trial courts to order direct victim restitution for those losses incurred as a result of the crime of which the defendant was convicted." (*People v. Martinez* (2017) 2 Cal.5th 1093, 1100–1101.) The "requirement that the damages result from the defendant's criminal conduct" means that the criminal conduct must be both a " "necessary antecedent" " and a " "proximate cause" " of the damages. (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1321 (*Holmberg*); see also *People v. Foalima* (2015) 239 Cal.App.4th 1376, 1396 ["California courts have adopted the 'substantial factor' test for analyzing proximate cause"].)

Holmberg, supra, 195 Cal.App.4th 1310 is instructive. There, the defendant was convicted of concealing stolen property and he argued "his conduct was not a substantial factor in causing the victims' losses because their losses were due to the burglary or theft." (*Id.* at p. 1318.) The court rejected that claim, concluding that the defendant was a "concurrent cause of the victims' losses and a substantial factor in depriving them of the use of their property." (*Id.* at p. 1322.) The court reasoned that "[t]here was evidence that defendant received the stolen property on the day it was stolen" and the defendant "admitted he knew the property was stolen when he possessed it." (*Ibid.*) Because "nothing prevented defendant from turning over the known stolen items to the police," his "concealing of the stolen property was a concurrent cause in depriving the victims of the use of their

property.” (*Ibid.*) On the other hand, the *Holmberg* court *reversed* the portion of the restitution award pertaining to property that was never shown to have been in the defendant’s possession. (*Id.* at p. 1325 [“By contrast, there was no evidence that defendant ever possessed the cables. We therefore . . . strike that portion of the award.”].)

Appellant argues that, in the present case, there is no evidence that he ever possessed “the victim’s lost tools, supplies, and hitch.” Respondent does not argue to the contrary or argue that *Holmberg*’s causation analysis was flawed.³ Accordingly, under *Holmberg*, in the absence of evidence that appellant ever possessed certain property stolen from the victim, we may not conclude appellant’s criminal conduct was a substantial factor in the loss of those items. Therefore, we reverse the restitution award to the extent it includes amounts for stolen property other than the van itself—\$12,073 for lost tools; \$3,800 for lost pipe fittings and supplies; and \$1,500 for a lost special hitch.⁴

³ Respondent argues appellant was properly required to pay restitution for the items stolen from the van because he possessed the van the day it was stolen and, like the defendant in *Holmberg*, he failed to report the theft to the police. But respondent fails to recognize that the evidence of the defendant’s possession of the stolen property was critical to the restitution order for *that property* in *Holmberg*.

⁴ Because we reverse those portions of the restitution award, we need not address appellant’s claim that a restitution award not based on proximate cause is unconstitutional. Appellant also argues briefly that the restitution award for lost wages “should have been reduced to account for the very short period of time that [appellant] was proved to be in possession of the van, and the lack of evidence that he did anything else to prevent the victim from working for six days after recovering it.” The only authority appellant cites is *Holmberg*, which states only that the substantial factor test of causation “‘honors the principle of comparative fault.’” (*Holmberg, supra*, 195 Cal.App.4th at p. 1322.) But appellant does not dispute that his criminal

III. *Sufficiency of the Evidence for the Trial Court's Valuations*

Appellant argues the trial court erred in awarding the victim \$5,000 for the value of the van and \$9,600 in lost wages based solely on the victim's statements to the probation officer.⁵ We reject the claim.

First, we reject appellant's challenge to the \$5,000 van valuation. At the restitution hearing, appellant's counsel presented evidence that a hypothetical van of the same make as the stolen van with 150,000 miles had a [Kelley] Blue Book value ranging from "\$2,600 to \$4,700." The stolen van had 189,000 miles. Appellant argues the trial court erred in valuing the van at "several hundred dollars above the [Kelley B]lue-[B]ook range even though the van had substantially higher mileage." But, as respondent points out, the victim at the hearing explained that the van had new tires and brakes and was maintained in top mechanical condition. He also explained that used vehicles were selling for more than the Kelley Blue Book values because of a post-pandemic shortage. Appellant did not seek to present his own evidence or cross-examine the victim. He has not shown error in the valuation of the van.

conduct was a substantial factor in loss of the van, and appellant cites no authority that a restitution award for damages due to a defendant's conduct must be reduced to reflect that there were other causes of the damages as well. *Holmberg* does not support that proposition because the court awarded restitution for the full value of the stolen property possessed by the defendant, without reduction due to the comparative fault of the actual burglars. (*Id.* at p. 1324.)

⁵ Appellant also challenges the valuation of the lost tools, supplies, and hitch, but we reverse those portions of the award on causation grounds. Appellant does not challenge the \$2,500 valuation of the van's "contractor package."

As to the lost wages, appellant argues the trial court erred in accepting “the victim’s representation that if not for the theft of his van and tools he would have made \$1,600 per day for six days, totaling \$9,600 in lost wages.” Appellant cites to a sentence in this court’s 2013 decision in *In re Travis J.* (2013) 222 Cal.App.4th 187, 204 (*Travis J.*), to the effect that “[t]he replacement or repair cost of the victim’s property cannot be established simply by statements made by the victim to the defendant’s probation officer.” For that proposition we cited to a Second District decision, *People v. Vournazos* (1988) 198 Cal.App.3d 948, and a decision of Division Four of this District, *People v. Harvest* (2000) 84 Cal.App.4th 641.

However, recently, Division Four in *Pittman*, *supra*, 99 Cal.App.5th 1252 rejected *Vournazos* and repudiated its decision in *Harvest*. (*Pittman*, at pp. 1259–1260.) Instead, *Pittman* held that “a trial court *may* accept, as prima facie evidence, a victim’s estimate in a probation report, thus shifting to the defendant the burden to show the requested amount exceeds the cost of replacement or repair.” (*Id.* at p. 1259.) *Pittman* explained that this “majority view . . . is more consistent with the public policy and constitutional requirement that victims of crime be made whole. [Citations.] Implementing this policy, section 1202.4 requires that the court order ‘full restitution,’ and provides broadly that a restitution order is to be ‘based on the amount of loss claimed by the victim or victims or any other showing to the court.’ [Citation.] As noted, once a prima facie showing has been made, the defendant may seek to disprove the amount claimed. [Citations.] In light of this statutory language and structure, we conclude there is no basis to impose—at the prima facie stage—a categorical rule that victim estimates of loss are insufficient, particularly since such estimates may in some cases be the only information reasonably obtainable to support a restitution request.

[Citation.] Instead, consideration of such estimates is within the trial court’s broad discretion in making a restitution order.” (*Id.* at pp. 1260–1261.) We agree with *Pittman* and conclude that the language appellant relies upon from *Travis J.*, *supra*, 222 Cal.App.4th 187 is not a correct statement of the law.

Because the trial court was entitled to rely on the victim’s estimate of his lost wages, and appellant has shown no other basis to conclude the court erred in that aspect of the award, appellant has not shown the court abused its discretion in awarding \$9,600 in restitution for lost wages (or, as previously concluded, \$5,000 for the value of the van).

DISPOSITION

The restitution award is modified to strike the \$12,073 awarded for lost tools; the \$3,800 awarded for lost pipe fittings and supplies; and the \$1,500 awarded for the van’s lost hitch. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment to reflect the modification of victim restitution from \$34,473 to \$17,100. The clerk is also directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

SIMONS, J.

We concur.

JACKSON, P. J.

BURNS, J.

(A172181)