

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

CORINNE ELIZABETH DYE,

Defendant and Appellant.

C047570

(Super. Ct. No.
CM020106)

Defendant Corinne Elizabeth Dye pleaded no contest to grand theft by embezzlement. (Pen. Code, § 487, subd. (a).)¹ The court suspended imposition of sentence and placed her on probation for 36 months. As a condition of probation, she was required to pay \$16,727.78 in restitution to Cleo's, a hair salon, which included \$13,447 missing from the salon's safe and \$3,280.78 missing from the salon's cash register.

¹ Further undesignated statutory references are to the Penal Code.

On appeal, defendant claims the order directing her to pay \$13,447 must be stricken because the prosecutor presented insufficient evidence she was responsible for stealing from the safe and the court used an irrational method and unreliable information to compute the amount, denying her due process of law. We affirm the judgment.

FACTS² AND PROCEDURAL BACKGROUND

On October 17, 2003, a Chico police officer spoke to Sherri Panucci, owner of Cleo's, about a report of embezzlement. Panucci told the officer the cash register consistently had been "coming up short" and a deposit bag containing cash, checks, credit card slips, and receipt tapes was missing from the salon's safe. A surveillance camera had videotaped defendant taking a total of \$370 in cash from the cash register on five different occasions and \$34.40 worth of hair care products.

After the officer viewed the videotape and told defendant its contents, defendant apologized to Panucci, offered to pay restitution, and explained she took the money to pay her bills. She denied taking the missing items from the safe.

Panucci estimated defendant took a total of \$16,727.78 from the salon: \$13,447 from the safe and \$3,280.78 from the cash

² Because defendant pleaded no contest, the facts are taken from the probation report.

register. She provided the probation officer with 93 pages of documentation on which she based these calculations.³

After defendant pleaded no contest to grand theft by embezzlement, the court held a restitution hearing at which the following evidence was adduced.⁴ Defendant was employed at the hair salon from October 15, 2002, to October 17, 2003. Because of shortages in the cash register, Panucci installed a surveillance camera. The camera recorded defendant stealing money from the cash register on October 8, 10, 11, and 13, 2003, and \$34 worth of merchandise.

On these days, either Panucci, or the manager, Debbie Rhodes, or the assistant manager, Arelia Contreras, had the responsibility of closing out the cash register. A register closeout was completed by adding up the cash, checks, and credit card slips in the cash register, placing these items into an envelope, and dropping the envelope through a slot in the salon's safe.

On October 10, 2003, Panucci requested Contreras perform a closeout of the cash register and make a deposit into the safe at 10:00 a.m., right before defendant was scheduled to come to work. Contreras then left work at 11:00 a.m. and defendant was the sole employee remaining in the salon. Contreras returned at

³ These documents were also admitted into evidence at defendant's restitution hearing.

⁴ Sherri Panucci testified under the name Sheree Gregory at the restitution hearing.

2:00 p.m. and, one hour later, after defendant had left work, Contreras closed out the cash register for a second time and made an additional deposit into the safe. The next day, Panucci discovered the 10:00 a.m. deposit missing from the safe.

The safe weighed 30 to 40 pounds, was not bolted to the ground, and was the size of a post office mailbox. An envelope deposited into the safe could be removed by turning the safe upside down and shaking it to the point where the envelope "peek[ed]" out of the slot.⁵

Defendant had a key to the salon and had access to the mall even when closed. On one occasion when a deposit into the safe had been stolen, Contreras found defendant inside the salon before it was scheduled to open.

Panucci performed an audit of the cash register for the time period of June 24, 2003, through October 16, 2003. Her audit showed a cash and check shortage of \$3,280.78. She also performed an audit of the deposits into the safe for the time period of September 5, 2003, through October 18, 2003. Her audit showed \$13,447 in missing cash and checks from the deposits. This amount excluded the credit card slips because, although the slips were also missing, the money had been electronically wired to the credit card companies at the time the client made the charge. The audit further showed, before

⁵ The police officer who came to the salon demonstrated this process to Panucci.

September 2003, no money was missing from the salon.⁶ A couple of weeks after defendant was arrested, Panucci installed a new, heavier safe and did not suffer further losses.

Defendant testified at the restitution hearing she did not have a key to the safe, did not take any items out of the safe, and never picked up the safe and tried to extract money from it.

Defense counsel argued insufficient evidence supported a finding defendant took money from the safe.

The court found, by a preponderance of evidence, defendant took money from the cash register and safe and ordered restitution in the full amount claimed.

DISCUSSION

I

On appeal, defendant renews her claim of insufficient evidence to support the finding she was responsible for stealing from the safe. We disagree.

Section 1202.4, subdivision (f), provides: "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." The standard to be employed at a restitution hearing is one of preponderance of the evidence. (*People v. Baumann* (1985) 176

⁶ Panucci went back in her records six months from September 2003.

Cal.App.3d 67, 80.) We uphold the trial court's findings of fact if supported by substantial evidence. (*People v. Brown* (1990) 216 Cal.App.3d 1442, 1447.) Substantial evidence is evidence of credible and solid value from which a reasonable finder of fact could determine the alleged facts were true (*People v. Cuevas* (1995) 12 Cal.4th 252, 260), including circumstantial evidence and the reasonable inferences flowing therefrom. (*In re James D.* (1981) 116 Cal.App.3d 810, 813.)

Panucci testified defendant was first recorded on the surveillance camera taking money from the cash register on October 8, 2003. On October 10, 2003, she had assistant manager Contreras perform a closeout of the cash register and make a deposit into the safe at 10:00 a.m. Contreras then left the salon for three hours and defendant was the sole employee remaining. The next day, Panucci discovered the 10:00 a.m. deposit missing from the safe. Panucci further testified the contents of the safe could be removed by turning the safe upside down. Finally, Panucci testified her salon suffered no losses prior to defendant's employment and no losses after the time defendant was arrested and the new safe installed. This was sufficient circumstantial evidence defendant was stealing from the safe.

Defendant, however, points out the area containing the safe was not videotaped, she was not charged with the duty of closing out the cash register or taking money to the safe, and no evidence was presented she handled the envelopes which were deposited into the safe. Defendant, in essence, is asking us to

reweigh the evidence; however, our job is to determine whether sufficient evidence supports the inference drawn by the trier of fact. (*People v. Perry* (1972) 7 Cal.3d 756, 785, overruled on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 28.) Having done so, we find no error.

II

Defendant claims the court used an irrational method and unreliable information to compute the amount of restitution attributable to the loss from the safe, denying her due process of law. Respondent argues defendant has forfeited this claim because she disputed only the allegation she had taken money from the safe. Defendant replies she "objected to the sentencing documents . . . by setting the matter for a contested restitution hearing, and arguing against including the amount missing from the safe at that hearing."

An appellate court ordinarily will not consider rulings in connection with relief sought where an objection could have been, but was not, presented to the trial court. (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) "Although the loss of the right to challenge a ruling on appeal because of the failure to object in the trial court is often referred to as a 'waiver,' the correct legal term for the loss of a right based on failure to timely assert it is 'forfeiture,' because a person who fails to preserve a claim forfeits that claim." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

The following evidence in the record supports application of the forfeiture doctrine. When Panucci testified, the

prosecutor asked if she brought to court the documents supporting her claim of the amount of money stolen from the cash register and the safe. She replied, "Yes." The prosecutor then marked Panucci's documents regarding the audit of the safe as "People's Number 1" and the documents regarding the audit of the cash register as "People's Number 2."⁷ The court stated the documents had to be received into evidence and asked whether defense counsel had an objection. After defense counsel stated, "No, your Honor," the court said it would receive the documents into evidence. Defense counsel then clarified he had no objection to the court receiving the documents into evidence and stated their evidentiary value was "subject to this hearing" and "other potential objections." The prosecutor then said to let him know if there was any objection.

After this exchange, Panucci testified in detail regarding the accounting practices she employed to calculate the amount stolen from the safe. Defense counsel interposed no objection to the testimony, her accounting practices, or her documentation. After Panucci's testimony, defense counsel stated he was not disputing the restitution for the cash missing from the register and "just want[ed] to deal with the safe theft." At the end of all testimony, defense counsel argued only insufficiency of evidence as it related to the money taken from the safe.

⁷ Defense counsel acknowledged he had copies of these documents.

Given defense counsel's notice to interpose objections to the evidence proffered showing the loss from the safe and cash register and his lack of objection to Panucci's accounting practices and documentation, defendant has forfeited the issue on appeal.

Moreover, even if defendant had preserved the issue, we would find no error in Panucci's calculation of the amount taken from the safe and would find substantial evidence to support the calculation.

In determining the amount of restitution and the victim's loss, "any rational method" may be employed and due process is satisfied as long as the "informational inputs" are reasonably accurate and reliable. (*People v. Goulart* (1990) 224 Cal.App.3d 71, 83.) Defendant bears the burden of showing the victim's estimates are excessive. (*Id.* at pp. 83-84.)

In "People's Number 1" and "People's Number 2" and in attachments to the probation report, Panucci explained how she calculated the loss from the deposits into the safe: "The loss was calculated by subtracting the grand totals before and after the theft, adding back in the last closure (money not lost) and then subtracting the credit card totals (also money not lost). The total loss for cash and checks stolen from the safe from September 5, 2003 thru [*sic*] October 18, 2003 is in the amount of \$13,447.00."

In addition to this explanation of her accounting method, Panucci provided approximately 84 pages of receipts from her salon and transaction information to verify the informational

inputs she used to calculate the loss. Her method and information, which the court impliedly adopted when ascertaining the loss, was not unreliable or irrational and provided substantial evidence on which to base the restitution award for money taken from the safe.

DISPOSITION

The judgment is affirmed.

NICHOLSON, J.

We concur:

SCOTLAND, P.J.

MORRISON, J.