

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LUIS M.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B238460

(Los Angeles County
Super. Ct. No. MJ20593)

ORIGINAL PROCEEDING; petition for writ of mandate. Benny C. Osorio,
Judge. Petition granted.

Ronald L. Brown, Public Defender, Albert J. Menaster, Guillermo Arevalo-Farias,
and Rourke Stacy, Deputy Public Defenders, for Petitioner.

Steve Cooley, District Attorney, Phyllis Asayama and Cassandra Hart, Deputy
District Attorneys, for Respondent.

INTRODUCTION

Luis M. petitions this court for a writ of mandate compelling the Superior Court to vacate its November 17, 2011 order, requiring him to pay restitution in the amount of \$3,881.88 to the City of Lancaster and to conduct a hearing to determine the actual amount of economic loss caused by his vandalism and to order restitution in that amount. We agree that the restitution award was erroneous and grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On May 19, 2011, a petition was filed under Welfare and Institutions Code section 602 alleging that Luis committed vandalism resulting in damage over \$400 in violation of Penal Code section 594, subdivision (a), by placing graffiti on walls, signs, electrical boxes, and metal boxes belonging to the Clear Skies Mobile Home Park and the City of Lancaster (City). On July 14, Luis admitted the charge. The juvenile court found the petition true but did not sustain the petition. It placed Luis on deferred entry of judgment probation for 12 to 36 months pursuant to Welfare and Institutions Code section 790.

The court held a restitution hearing on November 17. At the hearing, Marleen Navarro (Navarro), Crime Prevention Officer for the City, testified that one of her duties was to calculate the cost of graffiti cleanup in order to determine restitution. In making that determination, the City used a restitution model which was created using figures from 2006.

Navarro testified that the City's restitution model had a number of components: (1) the labor cost for public works personnel who clean up the graffiti and for the sheriff's deputy who investigates the graffiti call; (2) the equipment cost for the vehicles, sprayers and other equipment used for graffiti abatement; (3) the materials cost for paint and cleaning supplies used in graffiti cleanup; (4) the cost of contract services for tracking graffiti; and (5) traffic control and risk management costs.

For 2006, the cost of all components was \$1,380,208. The average number of calls regarding graffiti per year is 3,200. Using these figures, Navarro calculated the cost per graffiti incident to be \$431.32.

In reviewing the vandalism report resulting from Luis's tagging, Navarro noted there were nine incidents of vandalism at six different locations, involving electrical boxes and traffic signs. She calculated the cost for cleanup to be \$3,881.88.

On cross-examination, Navarro testified as to what costs were included in the components. She acknowledged that she did not know the particular costs incurred in the cleanup of Luis's tagging.

The court accepted the People's argument that it was appropriate to calculate restitution using the City's restitution model. It ordered Luis to pay \$3,881.88 in restitution.

DISCUSSION

A minor against whom a Welfare and Institutions Code section 602 petition has been filed and found true may be awarded deferred entry of judgment under certain conditions. (*Id.*, § 790.) If the minor performs satisfactorily the conditions of the deferred entry of judgment, which may include restitution, then the petition will be dismissed and the court records sealed. (*Id.*, §§ 793, 794.) Since there is no appealable judgment (*id.*, § 800; *Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 790), a challenge to a condition of deferred entry of judgment is by writ of mandate. (See, e.g., *G.C. v. Superior Court* (2010) 183 Cal.App.4th 371, 374; *Terry v. Superior Court* (1999) 73 Cal.App.4th 661, 663.)

We review a restitution order for 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.’” [Citations.]” (*In re Johnny M.* (2002)

100 Cal.App.4th 1128, 1132; accord, *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.)

However, “[t]he scope of discretion always resides in the particular law being applied, i.e., in the “legal principles governing the subject of [the] action” Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an “abuse” of discretion.’ [Citations.]” (*Ohton v. Board of Trustees of California State University* (2007) 148 Cal.App.4th 749, 766, disapproved on another ground in *Runyon v. Board of Trustees of California State University* (2010) 48 Cal.4th 760, 775; accord, *In re K.F.* (2009) 173 Cal.App.4th 655, 661.)

Welfare and Institutions Code section 730.6 (section 730.6), subdivision (a)(1), provides: “It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor’s conduct shall receive restitution directly from that minor.” Under subdivision (h) of section 730.6, restitution “shall be imposed in the amount of the losses, as determined.” The restitution award “shall be of a dollar amount sufficient to fully reimburse the victim . . . for all determined economic losses incurred as the result of the minor’s conduct for which the minor was found to be a person described in Section 602, including . . . [f]ull or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.” (*Id.*, subd. (h)(1).)

The purposes of victim restitution under section 730.6 are rehabilitation of the minor, deterrence of future delinquent behavior and compensation of the victim for economic losses. (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017.) When ordering restitution under section 730.6, the juvenile court ““may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation.’ [Citation.] . . . “[W]hile the amount of restitution cannot be arbitrary or capricious, ‘there is no requirement the restitution order be limited to the exact amount of the loss in which the

[minor] is actually found culpable’ [Citation.]” [Citation.]” (*In re Dina V.* (2007) 151 Cal.App.4th 486, 489; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391.) Nevertheless, there are established limits to the court’s exercise of discretion in fixing restitution, as we discuss below.

Luis’s first challenge to the City’s restitution model is that law enforcement costs are not recoverable as restitution where the law enforcement agency is not a direct victim of the criminal conduct. We agree in part.

As the court observed in *In re Johnny M., supra*, 100 Cal.App.4th at page 1132, “[s]ection 730.6 expressly states that ‘economic losses,’ not monies expended, is the governing test” in determining restitution. Thus, the costs of law enforcement investigation are not a proper component of restitution.

In *People v. Martinez* (2005) 36 Cal.4th 384, the defendant was convicted of attempting to manufacture a controlled substance. The restitution order included the cost to the Department of Toxic Substances Control to clean up the defendant’s illegal drug laboratory. (*Id.* at p. 387.) The Supreme Court held this was impermissible. Penal Code section 1202.4, subdivision (k),¹ provides for restitution to a “direct victim” of the crime. A governmental entity may recover under that section when the entity is the victim, for example, when the entity’s property is stolen or damaged. (*Martinez, supra*, at p. 393.) Since the defendant’s crime was not committed against the Department of Toxic Substances Control, the department was not a direct victim entitled to recover its cleanup costs as restitution under Penal Code section 1202.4, subdivision (k). (*Id.* at pp. 393-394.)²

¹ Penal Code section 1202.4, which is applicable to adult offenders, parallels section 730.6. (*People v. Martinez, supra*, 36 Cal.4th at p. 394, fn. 2.)

² The court noted that the Department of Toxic Substances Control could seek reimbursement for its cleanup costs under provisions of the Health and Safety Code, “the ‘exclusive’ means by which a government entity that is not a direct victim of a crime may recoup its costs of eradicating or cleaning up toxic or hazardous substances resulting from controlled substance crimes.” (*People v. Martinez, supra*, 36 Cal.4th at p. 394.)

Similarly, in *People v. Ozkan* (2004) 124 Cal.App.4th 1072, the court held the “public agencies are not directly ‘victimized’ for purposes of restitution under Penal Code section 1202.4 merely because they spend money to investigate crimes or apprehend criminals.” (*Id.* at p. 1077.) Investigative costs are recoverable only if there are other statutes which provide for such recovery. (See *id.* at pp. 1078-1081; see also *People v. Torres* (1997) 59 Cal.App.4th 1, 4-5 [law enforcement agency investigating drug sales not a direct victim entitled to restitution under Penal Code section 1202.4 of the amount spent on undercover purchases of illegal drugs].)

Based on the foregoing, it is clear that the sheriff’s department is not a direct victim of Luis’s vandalism, and law enforcements costs for investigation of graffiti vandalism are not recoverable as restitution. The juvenile court therefore abused its discretion in including law enforcement investigatory costs in the restitution order. (*Ohton v. Board of Trustees of California State University, supra*, 148 Cal.App.4th at p. 766.)

This is not to say that where law enforcement costs are incurred as a direct result of a crime, for example, in correcting the consequences of vandalism, they are not recoverable as restitution. The City’s restitution model is not so limited and includes costs, such as investigatory costs, which are not recoverable.

Luis also contends that the juvenile court erroneously based its restitution order on the City’s restitution model because there was no evidence as to which components of the model were used to abate Luis’s graffiti or as to the actual cost of the abatement. Therefore, he claims, there was no factual or rational basis for the order. Again, we agree.

Section 730.6, subdivision (h)(1), provides that the restitution award must be in an amount “sufficient to fully reimburse the victim . . . for all determined economic losses incurred as the result of the minor’s conduct.” Where the minor’s conduct causes property damage, that amount is “the actual cost of repairing the property when repair is possible.” (*Ibid.*) This includes both the cost of the materials used in the cleanup and

repair and the labor cost for public works personnel who clean up the graffiti. (See, e.g., *In re Johnny M.*, *supra*, 100 Cal.App.4th at pp. 1131, 1134.)

The general costs of maintaining vehicles and equipment used in graffiti abatement and of contract services for tracking graffiti are not economic losses incurred as a result of a minor's vandalism. These costs fall into the category of monies expended for graffiti abatement, which are not economic losses for which restitution is available under section 730.6. (*In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132; accord, *People v. Ozkan*, *supra*, 124 Cal.App.4th at p. 1077.) In the absence of evidence that any of these costs were economic losses by the victim of Luis's vandalism, they are not properly included in the restitution award.

The People rely on *People v. Goulart* (1990) 224 Cal.App.3d 71 for the proposition that a restitution award may be based on a loss or cost estimate. The case is inapposite. In *Goulart*, the defendant tampered with the utility meters at his home, so there was no way to determine the actual amount of the utility's loss. After discovering the tampering, the utility verified the defendant's actual energy consumption and used that figure to estimate its loss. (*Id.* at p. 77.) The court approved the utility's method of calculating its loss as rational. (*Id.* at p. 83.)

In *Goulart*, the estimate was based on the defendant's own energy use. Here, the estimate was based on an average of all costs of graffiti cleanup, with no consideration of any individualized facts, such as the type of graffiti Luis placed on public property and the extent of the efforts necessary to remove it. *Goulart* cannot be read to permit such an estimation.

In sum, the City's restitution model cannot provide the basis for calculating a restitution award, in that it includes sums which are not economic losses by the direct victim of Luis's graffiti vandalism, and the sums included for cleanup do not reflect the actual cost of the graffiti cleanup. The juvenile court therefore abused its discretion in

ordering restitution based on the restitution model. (*In re Johnny M., supra*, 100 Cal.App.4th at p. 1132.)³

DISPOSITION

The petition for writ of mandate is granted. The juvenile court is directed to vacate its restitution order and to hold a new restitution hearing, determining the amount of restitution to be awarded in a manner consistent with the views expressed herein.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

³ In light of this conclusion, we need not address Luis's claim that Navarro's testimony lacked foundation.