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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

T.J.,

Defendant and Appellant.

A133359

(Del Norte County
Super. Ct. No. JDSQ106141)

T.J. appeals a restitution order that the juvenile court imposed on him after sustaining a petition under Welfare and Institutions Code¹ section 602 alleging six counts of vandalism. T.J. contends the juvenile court abused its discretion when it ordered him to pay the victim of the vandalism the cost of two new tires instead of the cost of two used tires and when it ordered him to pay \$121.73 in noneconomic damages for the victim's inconvenience and frustration. We shall affirm the order insofar as it awards restitution for two new truck tires but reverse as to the award of \$121.73 for noneconomic damages.

Factual and Procedural History

The petition alleged and T.J. admitted that he had committed six counts of vandalism (Pen. Code, § 594) and one count of petty theft (Pen. Code, §§ 484, 488). Included among the acts of vandalism was slashing tires on two of the victim's vehicles.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

The victim's husband discovered that one tire on his "all auto, four-wheel drive GMC 2007 Sierra SLE" pickup truck and one tire on the victim's 2006 Volkswagen had been slashed. The truck tires were its original 2007 tires with approximately 54,000 miles of wear on the tread. The victim had not planned to replace the tires in the near future, but since purchasing the truck, the victim's husband had wanted to upgrade to larger tires and rims.

After discovering the slashed tires, the victim's husband took the truck to Les Schwab Tires in Brookings, Oregon where he was told that all four tires needed to be replaced. He purchased four new truck tires for a total of \$951.40. This amount included \$893.80 for four new tires and \$58 for balancing. He also received a \$180 trade-in credit for the three remaining truck tires that were replaced.

The victim requested \$1,378.23 in restitution for replacing the four truck tires and one Volkswagen tire. At the conclusion of an evidentiary hearing, the juvenile court awarded restitution of \$807.23. In arriving at that figure, the court started with the cost of the four new 18-inch, all-terrain tires purchased for the truck (\$893.80) and reduced that amount by \$160 to \$733, taking into consideration that the victim had purchased upgraded tires. The court then reduced that amount to roughly \$360, concluding based upon expert testimony that the victim was required to replace only two (not four) tires. Lastly, the court added \$30 for the cost of balancing the two tires, \$285.50 for the cost of replacing the Volkswagen tire,² and \$121.73 in additional damages.

Discussion

We review the trial court's restitution order under the abuse of discretion standard. (*In re K.F.* (2009) 173 Cal.App.4th 655, 661.) The court must determine whether the ruling falls outside the bounds of reason under the applicable law and the relevant facts. (*People v. Williams* (1998) 17 Cal.4th 148, 162.) A victim's right to restitution is broadly and liberally construed. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) Restitution must be reasonably calculated to make the victim whole, rehabilitate the

² No challenge was made regarding the replacement value of the Volkswagen tire.

minor, and deter future delinquent behavior. (*In re Alexander A.* (2011) 192 Cal.App.4th 847, 856.) “ “ “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.” ’ ’ ” (*In re Johnny M., supra*, at p. 1132.)

I. *Replacement Cost*

T.J. argues that the trial court erred by awarding the victim the cost of two new tires instead of two used tires for the truck. The judge ordered him to pay restitution for two new truck tires in the amount of \$390 (\$360 plus \$30).³ Section 730.6, subdivision (h)(1) provides that a victim is entitled to restitution for the “[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.” “[W]hile the amount of restitution cannot be arbitrary or capricious, ‘[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. . . .’ ” (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 800.)

The minor’s expert testified that the two front tires needed to be of the same tread design and tread depth, but that tire companies sell many different types of tread patterns. As a result it would have been difficult to find a used tire to match the tread patterns of the remaining tires. The prosecution’s expert testified that it would have been difficult for a tire store to find used tires with the appropriate specifications. There was no evidence that a tire store would have been able to find such a set of used tires. “[I]n this economy” it would have been especially difficult to find a used matching tire because “most people are trying to . . . get every bit they can out of [their tires]” and, thus, the availability of such a used tire was speculative. The Attorney General correctly argues that it would be

³ Although only one truck tire was slashed, the prosecution and defense experts testified that both front tires on an all-wheel drive vehicle must match in diameter. Thus two replacement tires were necessary.

unreasonable and is unnecessary to burden the victim of the minor's criminal acts by requiring the victim to prove that she could not have further mitigated her damages by searching for suitable used replacement tires. (See *People v. Superior Court* (2011) 196 Cal.App.4th 1221, 1226.)

T.J. also argues that even if used tires were not readily available, awarding the victim the cost of two new tires constituted a windfall because the victim received tires of a greater quality than the tires that were actually damaged. But the victim was forced to purchase tires that she otherwise would not have purchased. She had no choice but to purchase new tires due to the unavailability of used tires with the required specifications.

People v. Chappelone (2010) 183 Cal.App.4th 1159, on which T.J. heavily relies, involved extremely different circumstances. The defendants in that case were ordered to pay restitution for the retail value of property stolen from Target, although "a majority of the stolen merchandise was already damaged at the time of the theft – and thus destined for donation." (*Id.* at p. 1176.) The Court of Appeal reversed because Target was awarded "restitution for property that was of greater quality than that which defendants stole" (*id.* at p. 1177), but did not address a situation such as is presented in this case, where the individual victim had no realistic choice but to replace the damaged property with new tires.

Under the present circumstances, we cannot say that the juvenile court abused its discretion in awarding restitution for two new tires.

II. *Non-Economic Damages*

T.J. contends the juvenile court abused its discretion by awarding an additional \$121.73 in noneconomic damages to the victim. The court justified the additional award as compensation for the hassle and time spent by the victim in getting her tires fixed. Section 730.6 authorizes direct restitution for economic losses and a trial court may "compensate a victim for any economic loss which is proved to be the direct result of the defendant's criminal behavior, even if not specifically enumerated in the statute." (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1046.) "The term 'economic loss' is accorded

an expansive interpretation.” (*In re Alexander A.*, *supra*, 192 Cal.App.4th at p. 854, fn. 4.) “[T]he juvenile court has broad discretionary power to impose terms and conditions of probation to achieve justice and enhance the reformation and rehabilitation of a ward.” (*In re Tommy A.* (2005) 131 Cal. App. 4th 1580, 1587.) But the court’s method must “ ‘reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’ ” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.)

The record provides no evidence of a compensable economic loss beyond the amount charged by Les Schwab Tires. “[A] trial court must demonstrate a rational basis for its award, and ensure that the record is sufficient to permit meaningful review. The burden is on the party seeking restitution to provide an adequate factual basis for the claim.” (*People v. Giordano* (2007) 42 Cal.4th 644, 664.) Although, as the court acknowledged, the victim undoubtedly spent time and effort in replacing the damaged tires, she did not submit receipts for the purchase of gas or testify to any other expense constituting an economic loss. While the court could have awarded additional restitution were there evidence of any such expenses (*People v. Keichler*, *supra*, 129 Cal.App.4th at p. 1046), the court was not authorized to compensate the victim for her frustration. The additional \$121.73 is unsupported in the record and must be stricken from the restitution order.

Disposition

The restitution order shall be modified to strike the award of \$121.73 for non-economic damages and as so modified is otherwise affirmed.

Pollak, Acting P.J.

We concur:

Siggins, J.

Jenkins, J.