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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re ANDREW V., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW V.,

Defendant and Appellant.

A134598

(Contra Costa County
Super. Ct. No. J1100611)

A victim of a crime in which his 2003 car was totaled replaced it with a 2005 used car of the same model and type. The juvenile court ordered appellant Andrew V. to pay restitution in the amount of the replacement car, finding that this was the amount necessary to make the victim whole. Appellant argues that this was an abuse of discretion. We disagree, and affirm the restitution order.

BACKGROUND

In February 2011, Richmond police were dispatched to a report of a car collision. The driver, 17-year-old appellant, had crashed a car into a utility pole while driving under the influence. The pole was knocked off its foundation and pushed about 50 feet into a lane of traffic. The car, a 2003 Acura TL, Type S, sustained major front end damage: the engine was pushed up against the dashboard, and all airbags were deployed. Police discovered that the Acura was actually an unreported stolen vehicle belonging to a man

named Brandon Bell. Police contacted Bell, informing him that his car had been in an accident. Bell arrived at the scene, where he described his Acura as “completely totaled.”

Bell rented a car for 30 to 40 days, costing him between \$400 and \$500. Bell also paid a \$1,000 deductible to his insurance company for the damages to his 2003 Acura. He then bought a 2005 Acura to replace his wrecked 2003 Acura. The 2005 Acura was the same model and type as the 2003 Acura. Before the accident, the 2003 Acura had approximately 70,000 miles on it. Bell could not recall how many miles were on the 2005 Acura, but he described the car’s condition as “almost new.” The 2005 Acura cost Bell between \$16,000 and \$19,000.

The Restitution Hearing

At the restitution hearing, the district attorney and defense counsel presented different Blue Book estimates for the value of Bell’s 2003 Acura. The district attorney searched how much a buyer would pay for a used 2003 Acura TL, Type S in “excellent” condition with 70,000 miles. Under these search conditions, he found that the 2003 Acura was worth \$12,960 before it was wrecked. Defense counsel took a different approach. He searched how much a seller would sell a 2003 Acura TL in “very good condition” with 70,000 miles. He came up with an estimated value of \$8,005 to \$9,690.

The court, however, chose not to award either of the estimated values for the 2003 Acura. Instead, the court awarded Bell the \$16,000 he paid for the 2005 Acura, the amount the court considered to be the replacement value of his stolen 2003 Acura. Because Bell could not recall the exact amount he paid for the 2005 Acura—only that it was between \$16,000 and \$19,000—the court opted to award Bell the lower estimate.

Accepting Bell’s testimony as credible and finding that there was “nothing really that contradicts what he actually paid or suffered,” the court proceeded to list its reasons for awarding him the price of the 2005 Acura:

“Number one, Mr. Bell bought the same model of car, just a couple of years younger. That’s reasonably close. He did not go out and splurge. He did not go out and buy himself a Ferrari or Lamborghini. He basically bought a replacement car.

“And I feel that the value between the 2003 and the 2005, first of all, is very difficult to tell. . . .

“And if there is an actual difference between the 2003 and the 2005 in value, that difference is two things. Number one, it’s theoretical. We may never be able to pinpoint it because there is not going to be an actual transaction for that 2003 car.

“And, number two, if there is, it’s not that big. Any difference between the two is not going to be that big. Not on any of the evidence that I have here.

“And, number three, even if there is some small difference, that difference should reasonably inure to the benefit of the victim for the purpose of rehabilitation of the minor. This is what the person suffered in order to get back on his feet and continue. He’s not continuing a champagne lifestyle. He’s continuing reasonably. The same manner in which he was going before this happened.

“And if there is some small value in difference, that this is reasonably what the replacement value is, and whatever theoretical actual value, that we’ll never know. Those things are reasonably close enough to each other that, for the purpose of rehabilitation of the minor, it should be ordered in restitution so that Andrew understands this was the cost of his bad choices.

“And I don’t think I should take it out of the pocket of Mr. Bell. He’s not making money on this. This is what he spent in order to continue his current life.”

In addition to the \$16,000 replacement value of the Acura, the court awarded Bell \$1,000 for the deductible paid to his insurance company and \$400 for his rental car fees, for a total restitution award of \$17,400.

DISCUSSION

The Law of Restitution and Standard of Review

We review the juvenile court’s restitution order for an abuse of discretion. (*People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1173 (*Chappelone*); *People v. Thygesen* (1999) 69 Cal.App.4th 988, 992 (*Thygesen*)). The trial court may use any rational method that could reasonably be said to make the victim whole, but may not make an order which is arbitrary or capricious. (*People v. Mearns* (2002) 97 Cal.App.4th

493, 498; *People v. Thygesen, supra*, at p. 992.) If there is “some evidence to support the court’s [restitutionary] ruling, disputed or not, [the reviewing court] will affirm the court’s order.” (*People v. Rubics* (2006) 136 Cal.App.4th 452, 462.) Put otherwise, we may reverse the trial court’s order only if we determine that the method the court adopted was arbitrary, capricious, or irrational. (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1389.) Finally, imprecision does not necessarily amount to an abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 666 [no abuse of discretion shown despite court’s “methodological imprecision”]; *People v. Akins, supra*, at p. 1389 [no abuse of discretion because more than one reasonable way to calculate restitution].)

The Victim Did Not Receive a Windfall by Recovering the Cost for the 2005 Acura

In support of its discretionary decision to award Bell the cost of his replacement car, the juvenile court cited *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391-1392, which provided: “[T]he 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. In doing so ‘ ‘ ‘[s]entencing judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.’ . . . ’ . . . [¶] This is so because a hearing to establish the amount of restitution does not require the formalities of other phases of a criminal prosecution.” (Fns. omitted.)

Appellant contends the court erred by considering the price of Bell’s 2005 Acura, rather than the value of the damaged 2003 Acura. After considering the figures both parties submitted, the court concluded that assigning a value for Bell’s stolen 2003 Acura was impractical. The court reasoned, “For a wrecked car, there’s no way to really pinpoint it because you don’t have an actual purchase and sale, you just have estimates.” Rather than pinpointing a value for the 2003 Acura, the court awarded Bell the cost of his replacement car. The court emphasized the similarity between the 2003 and 2005 Acuras, describing the difference between the cars as “reasonably close,” and “not that big.” Because Bell “basically bought a replacement car” “to continue his current life,” the court refused to take any “small value in difference” out of the victim’s pocket.

Appellant relies on Welfare and Institutions Code section 730.6, subd. (h)(1), which provides that delinquent minors reimburse the victim for “[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.” Appellant argues that the stolen 2003 Acura and the 2005 model cannot be considered “like property”: the 2003 Acura had 70,000 miles on it, while the 2005 model had very low mileage and was in “almost new” condition. Appellant analogizes his case to *Chappelone*, *supra*, 183 Cal.App.4th 1159, arguing that the victim here has also received an unlawful windfall. We find the facts of *Chappelone* to be very different from the facts here.

In *Chappelone*, the defendants stole merchandise from the victim, a Target department store. Most of the stolen merchandise was damaged or broken, intended to be donated, given away for free, or returned to the vendor. (*Chappelone*, *supra*, 183 Cal.App.4th at p. 1178.) Despite the unmarketable nature of much of the stolen merchandise, the trial court awarded Target the value of the merchandise at its last retail price, while also ordering the recovered merchandise returned to Target. (*Ibid.*) We reversed the restitution award, finding that Target had received “a sizable windfall, a windfall the law does not allow.” (*Id.* at p. 1185.) For instance, merchandise that Target had intended to give away for free was nonetheless valued by the trial court at its last retail or clearance price—giving Target a 100 percent windfall in many instances. (*Id.* at p. 1174.)

Unlike the victim in *Chappelone*, Bell did not receive a sizable windfall that the law does not allow. Approximately 60 days after appellant wrecked Bell’s 2003 Acura, he purchased another used Acura—the exact same model, but two years younger. The juvenile court acted within its discretion in awarding Bell the amount he paid for his replacement car. This was the amount the juvenile court determined was appropriate to make the victim whole. Furthermore, appellant had the opportunity at the restitution hearing to demonstrate that a 2003 Acura TL was available for a lesser price, but he

failed to do so. The court did not abuse its discretion in deciding that the 2003 and 2005 Acuras were “like property” for purposes of restitution.

Appellant’s brief refers to a hypothetical this court posed in *Thygesen, supra*, 69 Cal.App.4th at p. 995: “As to a victim, the purpose of the restitution statute is to make that victim whole, not to give a windfall. . . . If Bonner [the victim] were a car rental agency that lost a 1995 Ford Taurus, it would be entitled to the replacement value of a similar 1995 Ford Taurus, not a 1999 model.” But we cannot neatly apply this car hypothetical to the car case here. Respondent correctly points out that *Thygesen* was decided in 1999, so a “1999 model” would have been new, not used. Here, the events transpired in 2011, and Bell was able to find a 2005 Acura to replace his 2003 model. It is relatively easy to find out an exact value for a brand new car; finding the exact value for a car that is about eight years old is much trickier. As the juvenile court said, Bell “did not go out and buy himself a Ferrari or Lamborghini” to replace his stolen 2003 Acura. He bought a used Acura to replace a used Acura.

Our conclusion is buttressed by the most recent holding by our Supreme Court in a restitution case, *People v. Stanley* (2012) 54 Cal.4th 734, decided just last month. There, the court affirmed a restitution award requiring the defendant to pay the repair cost of the victim’s vandalized truck, even though the repair cost was nearly three times the amount of the purchase price. The court held that the restitution award did not result in a windfall to the victim. Rather, the award allowed the victim to “have her truck back in the same condition it was before defendant vandalized it.” (*Ibid.*) *Stanley* recognizes that a court acts within its discretion by awarding the amount needed to make the victim whole. Just as here.

DISPOSITION

The restitution order is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.