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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re KAREEM C., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREEM C.,

Defendant and Appellant.

A138536

(Contra Costa County
Super. Ct. No. J1101437)

I. INTRODUCTION

After appellant admitted that he (and two other juveniles) had committed second degree residential burglary, he was declared a ward of the court and placed on probation under home supervision. After a contested restitution hearing regarding one of the several burglaries, the juvenile court ordered appellant to pay two of the burglary victims \$420 by way of restitution. Appellant appeals, claiming his counsel was ineffective for failing to introduce police and probation reports, and documents including pictures of the stolen and recovered property, into evidence at the restitution hearing, because such would have established that two of the stolen items were in fact recovered.

Although our review of the record does not convince us that appellant’s counsel was ineffective regarding the admission of the police and probation reports, it does cast considerable doubt on whether the trial court was correct in the amount of restitution it

ordered appellant to pay, and the basis thereof. We therefore vacate the trial court's restitution order and remand the case to it for a reconsideration of the appropriate amount of restitution.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2011, appellant, then 14 years old, and two other juveniles were detained by officers of the Albany Police Department after a homeowner advised that department that she had seen one of them apparently examining various homes in her neighborhood. Shortly thereafter, the officers detained a minor in the neighborhood after finding a DVD player and several other electronic items in his backpack. The officers had noticed two additional minors when they originally approached the area, and later located and detained them in a nearby backyard; one of those other minors was appellant. The police located another backpack in the area where they had detained appellant and the third minor and, in it, they found another DVD player, a laptop computer, a small pouch of coins, a disposable camera, and a glass figurine.

All of the property in the two backpacks had been reported stolen earlier in the same day from the residence of Colleen Cowles and Dale Densmore, who lived in the same area. Later, both of those people went to the police station to identify and recover their property. They confirmed that all of the stolen property had been accounted for except for a computer monitor. They also advised the police that two packets of gum found in appellant's pocket had been in their home.

The Albany police went to the home of Cowles and Densmore, where they found that a glass pane on the front door of that residence had been broken. It also appeared to the police that someone had rummaged through several closets, drawers, and cabinets. The police dusted the front door and found that some of the fingerprints on it matched appellant's.

On October 6, 2011, the Alameda County District Attorney filed a first amended wardship petition against appellant pursuant to Welfare and Institutions Code section 602, subdivision (a). It alleged that appellant had committed second degree burglary, was in possession of stolen property, and falsely represented his identity to the police in

violation, respectively, of Penal Code sections 459, 496, and 148.9. The same day, appellant admitted the first count and the District Attorney dismissed the latter two, albeit with “facts and restitution open.” The case was thereafter transferred to the Contra Costa County Juvenile Court, because appellant resided in the City of San Pablo in that county.

On December 15, 2011, that court accepted transfer of the case, declared appellant to be a ward of the court, reduced the one remaining count alleged against him, i.e., second degree residential burglary, to a misdemeanor, and placed appellant on probation with home supervision. The amount of restitution was reserved to be determined later.

However, this did not conclude matters. On February 22, 2013, one of the victims of the burglary, Colleen Cowles, who was allegedly out of work and otherwise unable to replace some of the stolen and broken items, requested restitution in the total amount of \$420. The probation department concurred in the request and, after a very brief, but contested, hearing on May 1, 2013, appellant was ordered to pay Cowles and Densmore that sum.

Appellant filed a notice of appeal the following day.

III. DISCUSSION

Appellant’s sole contention on this appeal is that the juvenile court’s order requiring him to pay restitution in the amount of \$420 for the damage to and still-missing items from the Cowles-Densmore home is reversible because of the ineffective assistance of appellant’s counsel, i.e., that counsel did not introduce into evidence the police and probation reports. Per appellant, had counsel done so, the court would not have ordered the payment of \$220 of the \$420 restitution, because those reports would have established that appellant “did not break the \$120 pink DVD player screen and he did not steal the \$100 laptop computer cord.”¹

On July 15, 2013, prior to the briefing in this case, this court issued an order granting appellant’s motion to augment the record to include the Albany Police

¹ Appellant does not contest the restitutionary award of the balance of the \$420 because that balance, i.e., \$200, consists of the repair cost for the broken glass panel on the front door and the value of one other missing item, apparently a computer monitor.

Department's police report along with its "Image Gallery." That motion did not seek admission of any Probation Department reports, but we have examined all the probation report materials in the clerk's transcript received from the trial court, and have no difficulty in concluding that none of that material addresses the issue of what was and was not recovered after the burglary. However, other material in the augmented record, including the police report, does raise questions concerning whether the trial court was correct in its assessment of the sum of \$420 against appellant for restitution.²

The brief restitution hearing was held on May 1, 2013; appellant was represented by counsel at that hearing. Appellant's counsel pointed out to the court that, with regard to the "pink portable DVD player . . . in this very descriptive police report there's no notice that the screen of the computer was broken when it was located by the police officers, nor was there any indication when they spoke with the parties—the victims—at the time that there was any damage noted to the portable DVD player." Appellant's counsel also suggested that the sum of \$100 was "a bit much for a computer charger"

No response was made to these arguments by either the prosecutor or the probation officer, and the court asked no questions of defense counsel regarding the two items the value of which she was asserting should not be included in any restitution order. It simply stated that it did not find the \$420 to be "unreasonable."

Welfare and Institutions Code section 730.6 applies to restitution proceedings brought under section 602 of that code, i.e., proceedings involving a "person who is under the age of 18 years [who] violates any law of this state or of the United States." (Welf. & Inst. Code § 602, subd. (a).) It provides that a victim of such a person's conduct "who incurs any economic loss as a result of the minor's conduct shall receive

² We therefore need not discuss the issue principally briefed by the parties, i.e., whether there was ineffective assistance by appellant's counsel in not requesting admission of the police and probation reports. This is so because the police report is now in the record, and the probation department materials in the record contain nothing pertinent to the key issue before us, i.e., the amount of restitution ordered and the items for which the amounts were ordered.

restitution directly from the minor.” (Welf. & Inst. Code, § 730.6, subd. (a)(1).) One of our sister courts has held—in the process of reversing a juvenile court’s restitution ruling—that section 730.6 “makes clear the sentencing court is itself required to evaluate the evidence and resolve the issue of the proper amount of restitution which will fully reimburse the victims.” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1390.) Our review of the record suggests that such an evaluation of the evidence regarding the “proper amount of restitution” was not done here. That conclusion is based on several facts made evident by the augmented record.

First of all, the December 8, 2011, probation report recites that a probation officer spoke to “victim Colleen Cowles via telephone” on November 30, 2011. “She confirmed the information contained in the police report, which was that she and Mr. Densmore had recovered all of the property stolen from their home except a computer monitor.” Cowles also said that she would determine “the exact amount of loss . . . ‘as soon as possible’ and then submit the information” to the probation officer soon thereafter.³ Apparently, no mention was made by Ms. Cowles to the police officer of either a still-missing laptop computer cord or any damage to the pink DVD player.

Second, the police report, which is now in the augmented record before us, although noting the finding of the pink DVD player by the police, does not note that it was in any way damaged. Indeed, that report, on its “CRIME REPORT—PROPERTY” page, lists the “Value” of that player to be \$120 and, in the next column, its “Val Recovered” to be exactly the same. Most importantly, neither that item nor any other of the stolen and later recovered items is listed in the last column of that page, i.e., “Val Damaged.” Additionally, that report does not list the computer cord as stolen and still missing, although it specifically does so for the apparently still-missing computer monitor.

³ And this was not the first time such a request had been made to Ms. Cowles and Mr. Densmore. An Albany police report prepared on the day of the burglary, June 15, 2011, recites that a police officer had asked them “to check their home for any additional loss and provide me with a list.”

Third, that police report also contains a final page which shows pictures of all the recovered items. One of those photographs includes the “pink DVD player.” Although the photograph showing that item is rather small, and includes three other recovered items, nothing in it suggests the DVD player was damaged in any way.

Finally, notwithstanding her commitment to do so, Ms. Cowles clearly did not provide the Albany police with her promised “as soon as possible” follow-up regarding “the exact amount of the loss.” It was not until well over a year later, i.e., on or about February 22, 2013, that she told a deputy probation officer—who almost certainly was the person initiating their contact—that “a cable cord to her notebook (mini computer) was stolen (\$100) [and] her granddaughter’s pink, portable DVD player was recovered but the screen was broken” From the record before us, this was apparently the first time either she or Densmore had asserted either of those claims to the authorities.

In view of these several considerations, we conclude that the trial court’s restitution order must be reconsidered, especially with regard to the two items noted above, i.e.: (1) whether the pink DVD player was in fact damaged before its recovery by the police, and (2) whether a cable cord for the notebook computer was also stolen by appellant and not recovered by the police.

IV. DISPOSITION

The trial court’s May 1, 2013, restitution order is vacated and the matter remanded to the trial court for a further consideration of that order as indicated above.

Haerle, J.

We concur:

Kline, P.J.

Richman, J.