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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re MIGUEL G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL G.,

Defendant and Appellant.

A138956

(Contra Costa County
Super. Ct. No. J13-00090)

Miguel G. appeals after pleading no contest to one count of felony battery with serious bodily injury and one count of felony grand theft from a person in a juvenile wardship proceeding (Welf. & Inst. Code, § 602),¹ and being removed from home for placement. He contends that the juvenile court abused its discretion when it ordered him to pay victim restitution in an amount not supported by substantial evidence and, further, that he was denied due process when the court prevented him from challenging the restitution claims. He also contends the juvenile court abused its discretion and violated his constitutional rights when it imposed gang conditions of probation. Because we conclude the juvenile court abused its discretion when it

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

ordered restitution for claims related to gas costs, parking and bridge tolls, and lost wages, for which the victim did not make a prima facie showing of loss, we shall reverse the portion of the restitution order covering those claims and remand the matter to the juvenile court for a new restitution hearing. We shall otherwise affirm.

PROCEDURAL BACKGROUND

On January 23, 2013, an original juvenile wardship petition was filed, pursuant to section 602, subdivision (a), alleging that appellant, then age 17, had committed second degree robbery (Pen. Code, § 211/212.5, subd. (c)—count one), and assault by force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)—count two).

On February 8, 2013, the juvenile court granted the prosecutor’s motion to amend the petition to add the allegations of felony battery with serious bodily injury (Pen. Code, § 243, subd. (d)—count three), and felony grand theft from a person (Pen. Code, § 487, subd. (c)—count four). Appellant then pleaded no contest to counts three and four in exchange for dismissal of counts one and two.

On February 27, 2013, after a contested disposition hearing, the juvenile court adjudged appellant a ward of the court and set a maximum term of confinement of four years eight months. The court committed appellant to the Orin Allen Youth Rehabilitation Facility for the regular nine-month program, with an additional 90-day conditional release/parole period. The court also imposed conditions of probation to be followed upon his release from commitment.

On June 7, 2013, after a contested restitution hearing, the juvenile court ordered appellant to pay victim restitution, jointly and severally with his codefendant, Edgar G., in the amount of \$5,598.57, with restitution remaining open for “shoes and future expenses.”

On June 12, 2013, appellant filed a notice of appeal.

FACTUAL BACKGROUND

The probation report states: “According to [the] Pittsburg Police Department, . . . on January 10, 2013, at approximately 3:26 p.m., an officer responded to . . . a report regarding a male juvenile who was the victim of a strong arm robbery.

“The victim, Mario R[.], reported to the officer that he was walking home from school when he observed a red truck pull over near him. He said the suspects exited the vehicle and approached him. At that time, he began to run away from the suspects; however, the minor, Miguel G[.], caught him and demanded his shoes. The victim said he refused and the minor punched him with his fist in his right eye. He then fell into a cyclone fence and attempted to run away again, but tripped and fell on his left arm and he immediately felt pain. He remained on the ground covering his head, while the minor and co-responsible, Edgar G[.], continued punching and kicking him numerous . . . times. The minor then removed one of his shoes and fled the scene. As a result of the assault, the victim sustained a broken arm.

“On January 18, 2013, the minor and co-responsible were arrested and transported to the Pittsburg Police Department. . . .

“After further investigation, the police . . . found pictures of . . . co-responsible displaying hand signals in front of firearms that were lying on a bed.² When officers searched the co-responsible’s bedroom, they found live ammunition inside a backpack.”

DISCUSSION

I. Victim Restitution

Appellant contends the juvenile court abused its discretion when it ordered him to pay victim restitution in an amount not supported by substantial evidence. He also contends he was denied due process when the court prevented him from challenging the restitution claims. As to awards for ambulance and medical care costs, to which defense counsel did not object, appellant alternatively argues that he received ineffective assistance of counsel.

² The report initially stated that the photographs depicted both Edgar G. and appellant but, at the disposition hearing, the court struck the reference to appellant after it was shown that appellant did not appear to be in the sole photograph in the probation department’s possession.

A. Juvenile Court Background

On February 18, 2013, the victim, Mario R., and his mother, Mrs. R., filed a claim for restitution, in which they listed the following losses: \$2,073.57 for American Medical Response ambulance service; \$235 for tennis shoes and a hat; \$300 for gas to go to medical appointments; \$200 for bridge tolls and parking related to medical appointments; \$140 for medicine; \$3,000 for Mrs. R.'s lost income; \$20,000 for future recovery expenses, including physical therapy, doctor appointments, and counseling services; and \$100,000 to \$250,000 for future loss of income because Mario would not be able to work in construction for one year, once he turned 18. No receipts, statements, or invoices were included with the claim, although documents reflecting a later referral to physical therapy, dated May 31, 2013, and a later referral to occupational therapy, dated April 19, 2013, were apparently presented at the subsequent restitution hearing.

In the probation report, dated February 27, 2013, the probation officer wrote, *inter alia*, that Mrs. R. had reported that the victim, Mario, "received a broken arm and a swollen right eye from the attack. The victim stayed overnight in the hospital and continues to experience post traumatic symptoms of nightmares, headaches, and loss of appetite. Her son just recently returned to school since the attack, and said he has been threatened at school by friends of the co-defendants. Mrs. R.[.] said she reported this to the principal at [the victim's high school]. Included in the Victim Impact Statement is financial restitution for medical expenses, and damaged or stolen clothing. She also included the loss of projected income for her son, who has lost the use of his arm for at least one year. The victim, who will be 18 years old soon, was to have begun a career in construction, and the projected loss is \$100,000 to \$250,000 in salary.

"The victim's medical expenses totaled \$2,440; clothing expenses are \$235. Mrs. R.[.] is requesting \$3,000 to cover her lost wages for transporting and caring for her son during his rehabilitation. Mrs. R.[.] also projected an additional \$20,000 towards her son's future recovery costs, including long term physical therapy and mental health needs. The victim's parents have been referred to Victim Witness, which will help with the actual cost, however, restitution will need to be determined."

At the June 7, 2013 restitution hearing at which the victim's mother, Mrs. R., was present, defense counsel submitted on the \$2,073.57 ambulance service fee, stating that, although "it would have been very helpful to have a receipt," the amount requested seemed reasonable.

Counsel disputed the request for \$200 for the Air Jordan shoes, and the court deferred ruling on that request, pending a determination whether the stolen shoe was still in police department custody. Counsel also disputed the request of \$35 for the hat, arguing that the police report did not indicate that the victim had lost a hat, but the court found that the request was reasonable and ordered \$35 in restitution for the hat.

Defense counsel then disputed the \$300 for gas, stating, "we don't know where this was to and from." Noting that the amount seemed extremely high, counsel said, "there must have been some significant mileage covered and there's no indication of what this gas was used for." The prosecutor said "it seems as if" the gas was for trips from Pittsburg to University of San Francisco's (UCSF's) children's hospital for "several visits." When counsel also noted that the address she had for the victim was in San Francisco, the prosecutor said that Mrs. R. had told him that she took her son from Pittsburg, where the family now lived, to San Francisco 15 times between the January 10, 2013 incident and February 18, 2013, the date the claim was submitted.

The court then asked the prosecutor what kind of car was used for the trips, and the prosecutor said it was a Toyota Corolla and the "estimation is at least 15 trips. I would say perhaps 80 to 100 miles per trip." The trial court disagreed that a Toyota Corolla would only get 20 miles to the gallon, as the prosecutor claimed the mileage; number of trips; and amount of gas money allegedly spent reflected. The court stated that a Toyota Corolla would get "somewhere north of 30 miles per gallon at least," and therefore cut the claim in half to \$150. When codefendant's counsel asked the court if it could specify the number of trips it found had been taken from Pittsburg to San Francisco, the court responded: "I'm not calculating each individual trip in miles per gallon. The law doesn't require me to do it. The law requires me to look to see if the

claim is reasonable. If it isn't, but there is a claim to be made, what a reasonable claim would be. And I have the authority to cut the claim, and that's what I'm doing."

Defense counsel objected to the gas claim even after the court cut it in half, stating, "It does appear unreasonable that every other day for a broken arm someone is being treated at a hospital when he was merely in a sling just not long after the incident."

As to the claim for \$200 for parking and bridge tolls, counsel objected, stating that there was no documentation and that it was implausible that Mario had a doctor's appointment every other day. Counsel also noted that she had seen a photograph taken of him at school shortly after the incident, "with his arm around his girlfriend and he's flashing signs with his other arm. So I again question the credibility that he was going to the doctor every other day for a month and a half or a month and some change." The prosecutor argued that \$75 for bridge tolls and \$120 for parking "seems reasonable for going for 15 trips to San Francisco." The prosecutor also said, "the mother tells me they were referred to several other clinics within San Francisco, not just UCSF"

Defense counsel again argued that she did not know what the basis of the appointments were, and that it was unreasonable that the victim went to San Francisco for appointments 15 times, given that he did not require surgery or "any extensive medical treatment other than a standard broken arm." "[R]equiring someone to go every other day to a hospital for a broken arm, there would have to have been something really extraordinarily wrong with that arm." The court found the claim reasonable and ordered \$200 in restitution for bridge tolls and parking.

With respect to the \$140 claim for medicine, when defense counsel stated there was no information as to what the medicine was for, the prosecutor said, "The victim's mother tells me that that's for antibiotics and other prescribed medication that they had to pay over the counter for because they do not have insurance." Counsel submitted on that claim, and the court, finding the claim to be reasonable, ordered \$140 in restitution for medicine.

Finally, regarding the claim for \$3,000 in lost wages, the court asked the prosecutor for more information about that claim. The prosecutor responded: "The

victim's mother tells me that she had a job in San Francisco where she worked for an attorney and she made [\$]3,000 a month. And I think this was a little bit over a month and what we're talking about from the incident date because she had to keep taking her son back and forth. She wasn't able to go to work for that month and that's what the loss of income was." The court then asked Mrs. R. to tell the prosecutor "what type of occupation you had." The prosecutor responded, "Doing filing, clerical work for an attorney in San Francisco."

Defense counsel asked for a continuance so that she could look into some issues, including the victim's school attendance records. She said that she had not known there was going to be a claim that the victim was going to the doctor 15 times over the period of time in question. She said, "This is a very glib request of— . . . what was owed with no detail, no documentation, no receipts attached, no dates, no—I didn't have notice until just now that these claims were going to be made which was why this amount was so surprising when I first received it. And now that I know what . . . claims are being made, I think that it's probably worth putting over to look into the veracity of some of these claims."

The court stated that "the question is one of reasonableness, and if her claim was she had a job that paid her \$500,000 a month, I would be in a position to want to challenge that claim. I did ask questions now about what kind of job she had." The court further said it would not continue the matter if counsel was anticipating getting records to which she had no right, but that "[i]f there's something else you believe you can prepare and obtain that you have a lawful right to get, I'm happy to give you more time to prepare because I understand that 15 times per month . . . was not known to you at the time and that affects many of these claims. It affects the claim for gas costs. It affects the claim for bridges and tolls and parking. It could indirectly affect lost wages, although maybe not directly." The court acknowledged that counsel was "somewhat in a bind," and that the "victim is not subject to subpoena. The only right you have to cross-examine is if the witness is sworn and testifies; otherwise, you have no right to access the victim in terms

of restitution hearing. The burden is on you, as you know, so I'm not clear what it is you'll be trying to get."

Codefendant's counsel then asked to cross-examine Mrs. R. since "[s]he is here. She's feeding information to the district attorney. He's repeating it with no documentation." When the court said the law would not allow her to cross-examine Mrs. R., codefendant's counsel responded, "I have literally no way to contradict whether she actually had a job. . . . [H]ere's my opportunity to counter what she says but how would I do it if I don't know where she worked?" Appellant's counsel joined in the request to cross-examine Mrs. R., based on appellant's due process rights.

The court confirmed that it believed that the prosecutor had satisfied his burden of showing lost wages and that the burden had shifted to the defense to counter that showing, and asked counsel how much time she needed for a continuance. Counsel said that, to know how much time she needed, she would need clarification about whether Mrs. R. was claiming \$3,000 in lost wages for missing an entire month of work, or just the 15 days of appointments. The court responded that "there are all kinds of alternative interpretations for why the mother missed work other than going to a doctor's appointment, and it's just speculation on my part of what those reasons would be. That isn't my job here." Counsel responded, "Then it appears on its face unreasonable if there's no indication of why work was missed."

Counsel then withdrew her request for a continuance, explaining: "I—because I don't know what the basis of these lost wages are, I cannot—at this point I don't know what inquiry I would have to engage in to—because I don't—we don't even have how long, how many days were missed, how many hours, what the reasons were. So I—there's nothing, and I don't know who her employer is. There's nothing that I—there's no further investigation I can conduct without having the opportunity to meaningfully cross-examine the individual who is in court today. And so I—there's—there's nothing further that I can do." Counsel again asserted that appellant's due process rights were being violated. While she acknowledged that restitution law requires very little documentation, "restitution amounts cannot be arbitrary and capricious and that's exactly

what this is. This is about as arbitrary as it gets. We have no idea what her wages were. We have no idea what missed days of work she suffered. We have no idea [of] the reason why she missed work, and we have no idea that her missed work had anything to do with the actions of either of our clients. So I think that this is without further documentation a—a very arbitrary . . . and capricious amount.”

The court then stated: “I reject the characterization of this as, you know, as great an abridgement of due process as there could be. I don’t agree with that at all. I think the claims that I’m approving here are perfectly reasonable, and that’s what the law requires, and that’s the law that I’m applying.” The court therefore ordered \$3,000 in restitution for Mrs. R.’s lost wages.

In total, the court ordered \$5,598.57 in restitution. It deferred the restitution claim as to the Air Jordan shoes, future medical costs, and loss of future income.

B. Legal Analysis

Restitution in juvenile cases is governed by section 730.6, subdivision (h), which requires the juvenile court to order restitution of “a dollar amount sufficient to fully reimburse the victim or victims 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” Those losses can include, inter alia, the value of stolen or damaged property (§ 730.6, subd. (h)(1)); medical expenses (§ 730.6, subd. (h)(2)); and the wages lost due to an injury incurred by the victim, including the wages lost by a minor’s parent “while caring for the injured minor” (§ 730.6, subd. (h)(3)).

“ ‘The purpose of an order for victim restitution is threefold, to rehabilitate the defendant, deter future delinquent behavior, and make the victim whole by compensating him for his economic losses. [Citation.] . . . [¶] The order is not however, intended to provide the victim with a windfall. [Citations.]’ [Citation.]” (*In re Travis J.* (2013) 222 Cal.App.4th 187, 204 (*Travis J.*).

“Generally speaking, restitution awards are vested in the trial court’s discretion and will be disturbed on appeal only where an abuse of discretion appears. [Citation.] Like most generalizations, however, this one can lead to errors if not applied with

circumspection. No court has discretion to make an order not authorized by law, or to find facts for which there is not substantial evidence.” (*In re K.F.* (2009)

173 Cal.App.4th 655, 661.) “The trial court ‘ “must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.” ’ [Citation.]” (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045 (*Keichler*).

The victim seeking restitution has the burden of presenting “an adequate factual basis for the claim.” (*People v. Giordano* (2007) 42 Cal.4th 644, 664 (*Giordano*)). Once that prima facie showing has been made, the burden shifts to the defendant to disprove the loss claimed by the victim. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 (*Gemelli*)). “ ‘When the probation report includes information on the amount of a victim’s loss and a recommendation as to the amount of restitution, the defendant must come forward with contrary information to challenge that amount.’ [Citation.] Absent a challenge by the defendant, an award of the amount specified in the probation report is not an abuse of discretion.” (*Keichler, supra*, 129 Cal.App.4th at p. 1048; accord, *In re S.S.* (1995) 37 Cal.App.4th 543, 547.) However, “a burden of refutation may not be imposed on the defendant merely by asserting that a stated amount is sought as restitution.” (*In re K.F., supra*, 173 Cal.App.4th at p. 665.)

1. Claims for Gas Costs, Parking and Bridge Tolls, and Lost Wages

Appellant contends the juvenile court abused its discretion when it ordered restitution in the amounts of \$150 for gas, \$200 for parking and bridge tolls, and \$3,000 for Mrs. R.’s lost wages. We agree.

Although a victim makes a prima facie showing “ ‘[w]hen the probation report includes information on the amount of the victim’s loss and a recommendation as to the amount of restitution’ ” (*In re S.S., supra*, 37 Cal.App.4th at p. 547), the victim in this case did not provide sufficient information to satisfy his initial burden related to these claimed expenses. (See *Giordano, supra*, 42 Cal.4th at p. 664.) In addition to the minimal information provided in the probation report and the attached claim, the prosecutor elicited information from Mrs. R. at the hearing that she had taken her son

from Pittsburg to various locations in San Francisco for medical appointments at least 15 times. As the court noted when it offered to continue the hearing to allow defense counsel to investigate these three claims, appellant had no advance notice that the claims were all based on the victim and his mother making some 15 trips from Pittsburg to San Francisco for medical appointments.

Moreover, even with the new information provided at the hearing, the victim still did not provide “an adequate factual basis” for these claims. (*Giordano, supra*, 42 Cal.4th at p. 664.) The evidence of loss here simply was not sufficient to allow appellant to meaningfully challenge the amounts claimed. Without more specific information regarding, for example, the exact number of medical appointments upon which all of these claims were based, the nature and location of each of the appointments, the distance from the victim’s home to the appointment locations, the amounts paid for parking, Mrs. R.’s place of work, her wages, the hours she was unable to work during the five-week period in question and the reasons why, appellant could not possibly attempt to disprove any of the claims. Hence, appellant should never have been required to search for evidence to counter the claim. Because the victim did not provide sufficient information to satisfy his burden of making a prima facie showing, the burden never shifted to appellant to disprove the loss claimed. (See *In re K.F., supra*, 173 Cal.App.4th at p. 665; compare *Gemelli, supra*, 161 Cal.App.4th at p. 1544 [probation report and attached list of claimed losses, which was extremely “detailed and facially credible in that it explain[ed] how each of the claimed losses [was] related to the burglary,” were sufficient to constitute a prima facie showing of losses incurred by victim]; *Keichler, supra*, 129 Cal.App.4th at p. 1048, [victim’s statements in probation report; itemization of amounts sought, including a recitation of medical bills and expenses incurred; receipts for costs incurred; and expert witness testimony at hearing constituted substantial evidence supporting restitution amount ordered by trial court].)

The juvenile court exacerbated this problem of insufficient evidence by informing counsel that the law did not permit any other inquiries, including, inter alia, the subpoenaing of wage records, investigating the victim’s school attendance records, or

cross-examining Mrs. R. The court did offer to continue the hearing, to give defense counsel the opportunity to investigate further, in light the new information about the number of visits the victim and his mother made to San Francisco between January 10 and February 18, 2013, as the basis for the claims. The court, however, had by then foreclosed every possible avenue to obtaining relevant information to counter the claims.

This case is thus distinguishable from *In re S.S.*, *supra*, 37 Cal.App.4th 543, 547-548, in which a panel of this Division rejected the defendant's claim that the items stolen from the victim's car were not described with sufficient specificity to warrant the restitution awarded. We explained that the trial court was entitled to infer, for example, "that the 'martial arts weapons and spears' referred to by the victim were in the car when appellant stole [them]. If they were not, appellant was competent to so testify. If further details were needed, appellant could attempt to procure them, either by contacting the victim or by requesting that the probation officer do so. Having done none of these things, appellant cannot complain about the lack of detail in the statement." Here, on the contrary, the basis for the restitution amounts requested was *not* sufficiently described to warrant restitution in the amounts claimed, and appellant had no way to challenge the victim's incomplete descriptions of his losses.

Our Supreme Court has explained that "a trial court must demonstrate a rational basis for its [restitution] award, and ensure that the record is sufficient to permit meaningful review." (*Giordano*, *supra*, 42 Cal.4th at p. 664.) Here, the juvenile court did not demonstrate a rational basis for the awards of restitution related to medical visits that took place between January 10, 2013, the date of the incident, and February 18, 2013, the date the victim restitution claim was filed. While the court had broad discretion regarding what evidence it utilized to determine the proper amount of restitution to award, the information upon which it relied in this case plainly was insufficient to support its restitution awards for gas expenses, parking and bridge tolls, and Mrs. R.'s lost wages. (See *In re K.F.*, *supra*, 173 Cal.App.4th at p. 661.)

Instead of requiring sufficient evidence to determine whether these costs were in fact incurred, the court repeatedly focused on whether the claimed amounts seemed

reasonable. For example, regarding the number of trips and the distance traveled between Pittsburg and San Francisco, the prosecutor said, “my estimation is at least 15 trips. I would say perhaps 80 to 100 miles per trip.” When counsel then asked the court to specify the number of trips it found had been taken from Pittsburg to San Francisco, the court responded that the law did not require it to calculate each individual trip in miles per gallon, but only to determine if the claim is reasonable. The court clearly did not have sufficient information to provide a factual basis for its order. Rather, the order was based on speculation and a determination of what the court thought would be reasonable, regardless of what had actually occurred. (See *Travis J.*, *supra*, 222 Cal.App.4th at pp. 203, 204 [where restitution claim was inadequate and victim’s credibility was questionable, trial court’s restitution award based on its own “ ‘reasonable estimate’ ” of victim’s damages amounted to “nothing more than speculation”].)

Similarly, in determining the proper amount of restitution for gas expenses, the court stated that it was not calculating each trip in miles per gallon, but was determining whether the claim was reasonable. Likewise, as to lost wages, the court found it reasonable to believe that Mrs. R. earned \$3,000 a month doing clerical work. When counsel asked for clarification regarding whether Mrs. R. was claiming \$3,000 in lost wages for missing an entire month of work or only for the 15 days of appointments, the court responded, “there are all kinds of alternative interpretations for why the mother missed work other than going to a doctor’s appointment, and it’s just speculation on my part of what those reasons would be. That isn’t my job here.”

In sum, the court found all of these claims reasonable without any solid information about distances traveled, number of hours of work missed, or the reasons for not working. The court thus based its restitution order “on nothing more than speculation.” (*Travis J.*, *supra*, 222 Cal.App.4th at p. 204.)³

³ Not only was evidence lacking to support the claims related to the victim’s doctor visits, the claims made for future restitution cast some measure of doubt on the credibility of these claims as well. For example, “future recovery expenses” for the victim were estimated at \$20,000. Although the record does contain medical referrals for

The victim here is plainly entitled to full reimbursement for the losses incurred due to appellant's crimes. The victim, however, failed to provide the court with an adequate factual basis for these claims, which would permit the court to make an order based on the victim's actual loss. (See *Giordano*, *supra*, 42 Cal.4th at p. 664.) Thus, because the court did not “ ‘use a rational method that could reasonably be said to make the victim whole,’ ” the part of the restitution order intended to reimburse the victim for gas costs, parking and bridge tolls, and Mrs. R.'s lost wages was arbitrary and capricious, and must be reversed. (*Keichler*, *supra*, 129 Cal.App.4th at p. 1045.) (Compare *In re K.F.*, *supra*, 173 Cal.App.4th at p. 666 [where precise economic value of victim's depleted sick leave was dependent on unknown variables, “the court in making a restitution order is not required to determine the ‘exact amount of loss,’ so long as it employs ‘a rational method that could reasonably be said to make the victim whole,’ and is not ‘arbitrary and capricious’ ”].)⁴

2. Claims for Ambulance Service Fee and Medication Costs

Appellant also argues that the juvenile court abused its discretion when it ordered \$2,073.57 in restitution for the American Medical Response ambulance service and \$140 for medication taken by the victim.⁵ Respondent counters that appellant has forfeited these claims due to his failure to raise them in the juvenile court.

future physical and occupational therapy, this figure is nevertheless extremely high. Even more questionable is the \$100,000 to \$250,000 in estimated lost construction wages for one year after the victim turns 18.

⁴ In light of our finding that the juvenile court abused its discretion, we need not address appellant's due process argument with respect to these three reimbursement claims. We do observe, however, that, while appellant's due process rights at a restitution hearing are quite limited, he must be provided with sufficient information—whether through detailed information in the probation report, receipts, medical statements, testimony, or other means—to provide an adequate factual basis for the claims and to permit him to meaningfully challenge the amounts requested. (See *People v. Cain* (2000) 82 Cal.App.4th 81, 86.)

⁵ Appellant did not challenge the \$35 in restitution ordered for the loss of the victim's hat in his opening brief and only mentions it in passing in his reply brief. We therefore will not address the propriety of this award. (See *Crowley Maritime Corp. v.*

Recently, in *People v. McCullough* (2013) 56 Cal.4th 589, 590-591 (*McCullough*), the California Supreme Court rejected the defendant's contention that he was entitled to challenge, for the first time on appeal, the sufficiency of the evidence supporting the trial court's order to pay a jail booking fee. As the court explained, "because a court's imposition of a booking fee is confined to factual determinations, a defendant who fails to challenge the sufficiency of the evidence at the proceeding when the fee is imposed may not raise the challenge on appeal." (*McCullough*, at p. 597.) Although *McCullough* does not directly resolve the question of whether a sufficiency of the evidence claim related to restitution is forfeited if raised for the first time on appeal, we believe the reasoning of *McCullough* applies here. We therefore find that appellant has forfeited the contentions related to reimbursement for the ambulance service and medication. (See *ibid.*; see also *People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218 [defendant forfeited challenge to restitution award of expert witness fee by failing to object in trial court]; but see *In re Travis J., supra*, 222 Cal.App.4th at p. 203 [finding no forfeiture despite failure to object in juvenile court because a sufficiency of the evidence claim requires no objection to be preserved for appeal].)

Moreover, even assuming these contentions are not forfeited, they nonetheless fail on the merits. First, unlike the restitution claims already discussed (see pt. I.B.1., *ante*), the victim provided specific facts related to these two claims. It was uncontested that Mario had been taken by ambulance to the hospital following the incident on January 10, 2013, and counsel acknowledged that the amount requested was reasonable. The victim's mother also provided more detailed information about the \$140 claim for medication at the hearing, with the prosecutor telling the court that it was for antibiotics and other prescribed medication not covered by insurance. Sufficient information was thus provided as to both of these claims to make a *prima facie* showing of loss, and appellant

Boston Old Colony Ins. Co. (2008) 158 Cal.App.4th 1061, 1072 [points raised for first time in reply brief will generally not be considered]; see also *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 [treating contentions not supported by "cogent legal argument or citation of authority" as waived].)

did not satisfy his burden of disproving that loss. (See *Giordano, supra*, 42 Cal.4th at p. 664; *Gemelli, supra*, 161 Cal.App.4th at p. 1543.) Hence, the court did not abuse its discretion in finding the requests reasonable and ordering restitution of \$2,073.57 for ambulance service fees and \$140 for medication costs, for a total of \$2,213.57. (See *Keichler, supra*, 129 Cal.App.4th at p. 1048.)⁶

II. Gang Conditions of Probation

Appellant contends the juvenile court abused its discretion and violated his constitutional rights when it imposed gang conditions of probation.

A. Trial Court Background

The probation report detailed statements by appellant that he and his codefendant, Edgar G., were members of the “Hello Kitty Gang” and that the gang was “about obtaining ‘girls’ because a lot of girls at school love Hello Kitty. He said that the gang is not involved in any ‘street gang’ activities” Appellant further stated that the victim, Mario R., was talking negatively about their Hello Kitty Gang.

At the disposition hearing, after defense counsel objected to appellant’s two-member Hello Kitty Gang being considered a criminal street gang, the juvenile court responded: “He’s not saying he’s a member of a criminal street gang. He’s saying he’s a member of the gang. And the issue isn’t . . . dispositive whether it meets the qualifications of [Penal Code section] 186.22. He’s saying he’s a member of a gang. So I take your point it may not meet all the requirements. Probably doesn’t. I don’t know. That doesn’t . . . strike at the heart of decision [*sic*] which is a gang. I mean there are all kinds of gangs that aren’t [Penal Code section] 186.22 gangs.

“So if you want to address yourself to that, that’s fine, but it’s going to be difficult to convince me of this because there is a photograph showing one of the minors, who I

⁶ In a single sentence, appellant asserts that, if a challenge to the award for ambulance fees is forfeited due to counsel’s failure to object, he received ineffective assistance of counsel “as there could be no tactical reason to stipulate to a fact for which neither party had evidence.” Even were we to address this abbreviated claim, it would fail for the same reasons we have found that these claims could not succeed on the merits. (See text pt. B.2., *ante*.)

think is your client, making gang signs. But even if it isn't your client and it's the other guy who is making the gang signs, they are together, and one or the other was making gang signs. Now, unless you have some other interpretation what those finger gestures meant, it seems to me they are clearly gang signs.”

When counsel stated that she knew nothing about the Hello Kitty Gang, the court responded that, “at a certain point if the probation officer says and the minors have both said they belong to a gang and there's a photograph of one of them making gang signs, I'm not going to disregard it because they each said it was a gang of only two used for meeting girls. I mean, that's—maybe it's true, maybe that isn't true. I mean I can't ignore the evidence that's in front of me.” The court further stated that some of appellant's other statements regarding the motive for the crimes caused it to doubt his credibility generally.

After declaring appellant a ward, the juvenile court imposed various terms and conditions of probation, including the following five gang terms:

“You shall not participate in any gang activity and shall not visit or remain in any specific location known to you to be, or that the Probation Officer informs you to be, an area of gang-related activity.

“You shall not knowingly possess, display or wear any insignia, blue or red clothing, logos, emblems, badges or buttons, or display any gang signs or gestures that you know to be, or that the Probation Officer informs you to be, gang related.

“You shall not obtain any new tattoo that you know to be, or that the Probation Officer informs you to be, gang related.

“You shall not post, display or transmit on or through your cell phone any symbols or information that you know to be, or the Probation Officer informs you to be, gang related.

[“Not to associate with anyone you know to be a gang member or that . . . Probation tells you is a gang member.”

“For purposes of these probation conditions, the words ‘gang’ and ‘gang-related’ means a ‘criminal street gang’ as defined in Penal Code Section 186.22[,] subdivision (f).”

B. Legal Analysis

“We review conditions of probation for abuse of discretion. [Citations.] Generally, ‘[a] condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. . . .” [Citation.]’ [Citation.] This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 379-380 (*Olguin*), quoting *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).)

In *In re Victor L.* (2010) 182 Cal.App.4th 902, 909-910 (*Victor L.*), we explained the special considerations involved in setting juvenile probation conditions: “ ‘The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents’ [citation] thereby occupying a ‘unique role . . . in caring for the minor’s well-being.’ [Citation.] In keeping with this role, section 730, subdivision (b), provides that the court may impose ‘any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’

“The permissible scope of discretion in formulating terms of juvenile probation is even greater than that allowed for adults. ‘[E]ven where there is an invasion of protected freedoms “the power of the state to control the conduct of children reaches beyond the scope of its authority over adults” ’ [Citation.] This is because juveniles are deemed to be ‘more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.’ [Citation.] Thus, ‘ ‘a condition

of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.”’ [Citations.]”

1.

Here, appellant first argues that the gang conditions as a whole failed the *Lent* test because there was no evidence that he was associated with a criminal street gang. (See Pen. Code, § 186.22, subd. (f).)⁷ We disagree.

Assuming without deciding that the instant offense was not related to a criminal street gang, we nonetheless conclude that the gang conditions are reasonably related to future criminality. (See *Olguin, supra*, 45 Cal.4th at pp. 379-380; *Lent, supra*, 15 Cal.3d at p. 486.)

In *In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1501 (*Laylah K.*), disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, footnote 2, the appellate court found that even though the evidence did not conclusively show that the minors were gang members, there was evidence that they were friends with gang members and their history reflected “increasingly undirected behavior.” The court therefore concluded that the gang conditions were reasonably designed to prevent future criminal behavior. (*Id.* at p. 1502.) As the court explained: “Where a court entertains genuine concerns that the minor is in danger of falling under the influence of a street gang, an order directing a minor to refrain from gang association is a reasonable preventive measure in avoiding future criminality and setting the minor on a productive course. Evidence of current gang membership is not a prerequisite to imposition of conditions designed to steer minors from this destructive path.” (*Laylah K.*, at p. 1502.)

⁷ Penal Code section 186.22, subdivision (f), defines a “criminal street gang” as “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in . . . subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.”

Here, although appellant claimed he was a member of the two-person Hello Kitty gang, which existed solely for the purpose of meeting girls, the court doubted his credibility based on his giving conflicting statements about the motive for the crimes and a photograph showing, at the least, his codefendant (and co-member of the gang of two) making gang signs. The probation report also noted that appellant stated that the victim of the attack was talking negatively about the Hello Kitty Gang. The probation officer also reported that appellant “has been using Marijuana chronically, and associates himself with a gang, and is lacking in school credits,” and that, while in juvenile hall, had received two room restrictions for failing to follow directions.

Here, as in *Laylah K.*, there was evidence that appellant was “in danger of succumbing to gang pressures.” (*Laylah K.*, *supra*, 229 Cal.App.3d. at p. 1501.) That the Hello Kitty Gang is not a criminal street gang does not negate the court’s reasonable concerns about appellant’s behavior and trajectory, particularly in light of its questions about appellant’s credibility. In sum, the court’s concerns about future criminality justified the gang conditions as “a reasonable preventive measure in avoiding future criminality and setting the minor on a productive course.” (*Id.* at p. 1502; see *Olguin*, *supra*, 45 Cal.4th at pp. 379-380; *Lent*, *supra*, 15 Cal.3d at p. 486.)

2.

Appellant next argues that two particular gang conditions imposed by the juvenile court are constitutionally infirm.⁸

“Under the void for vagueness doctrine, based on the due process concept of fair warning, an order ‘ “must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.” ’ [Citation.] The doctrine invalidates a condition of probation ‘ “ ‘so vague that men of common intelligence must necessarily guess at its meaning and differ as to its

⁸ It does not appear that appellant objected on this ground in the trial court. To the extent he offers facial constitutional challenges to these conditions, there is no forfeiture. (See *In re Sheena K* (2007) 40 Cal.4th 875, 889 (*Sheena K.*.) To the extent his challenges require reference to the record, they are forfeited. (See *ibid.*)

application.’ ” ’ [Citation.] By failing to clearly define the prohibited conduct, a vague condition of probation allows law enforcement and the courts to apply the restriction on an ‘ “ ‘ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’ ” ’ [Citation.]

“In addition, the overbreadth doctrine requires that conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. [Citations.]” (*Victor L.*, *supra*, 182 Cal.App.4th at p. 910; see *Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

Appellant first argues that the condition stating that he may not “visit or remain in any specific location known to [him] to be, or that the Probation Officer informs [him] to be, an area of gang-related activity” is impermissibly vague and overbroad.

In *Victor L.*, *supra*, 182 Cal.App.4th at page 916, we held that a condition of probation ordering the minor to stay away from “ ‘areas known by [him] for gang-related activity’ ” was “impermissibly vague in that it does not provide notice of what areas he may not frequent or what types of activities he must shun. The condition, as written, is not sufficiently precise for Victor to know what is required of him. [Citation.]” After concluding that the probation officer was in a better position to identify the forbidden areas for the minor, we modified the condition “to provide for the probation officer to notify [the minor] of the areas he must avoid.” (*Id.* at pp. 917-918.)

As respondent points out, the language at issue here, prohibiting appellant from visiting or remaining in any location that is either known to him, “or that the Probation Officer informs [him] to be, an area of gang-related activity” includes the specific language recommended in *Victor L.* to avoid unconstitutional vagueness. (See *Victor L.*, *supra*, 182 Cal.App.4th at pp. 917-918; see also *In re Vincent G.* (2008) 162 Cal.App.4th 238, 248 [modifying condition so as to forbid minor to “be at areas that you know, or that the probation officer informs you, are frequented by gang members”].) Accordingly, we reject appellant’s claim that the challenged condition is constitutionally infirm.

Appellant also argues that the condition that includes the requirement that he refrain from wearing blue or red clothing is constitutionally infirm because it is

overbroad and unrelated to appellant and his crime. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 890 [“A probation condition that imposes limitations on a person’s constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad”].)

As previously discussed, the gang conditions as a whole were related to appellant’s future criminality and imposition of those conditions was therefore within the court’s discretion. (See *Olguin*, *supra*, 45 Cal.4th at pp. 379-380; *Lent*, *supra*, 15 Cal.3d at p. 486.) The particular requirement that appellant not wear blue or red clothing is part of a condition that forbids the displaying or wearing of any items that appellant or his probation officer knows could be perceived to demonstrate his affiliation with or membership in a criminal street gang. Appellant asserts that the condition is overbroad because there is no evidence that he was a member of either the Nortenos or the Surenos. (See *People v. Valdez* (1997) 58 Cal.App.4th 494, 499, fn. 2 [expert testified that Hispanic gangs fall into Norteno and Sureno categories, that Norteno gangs identify with color red, and that Sureno gangs identify with color blue].) Appellant has forfeited this constitutional challenge to the condition as applied to him by failing to object on that ground in the juvenile court. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 889.)⁹

In any event, even assuming that appellant is not actively involved with a criminal street gang, the court reasonably found that he was moving in the direction of gang involvement. Thus, this condition was reasonably related to the prevention of future criminal behavior (see *Laylah K.*, *supra*, 229 Cal.App.3d at pp. 1501-1502), and was not overbroad because it was carefully tailored to foster appellant’s rehabilitation and to

⁹ At the sentencing hearing, when counsel asked whether the condition was related to any gang, the court responded: “Well, it certainly is with respect to the Hello Kitty Gang. But it seems to me that to avoid difficulty, he shouldn’t wear blue or red. I mean it seems just self-evident to me.” Counsel made no specific objection to this condition.

protect both appellant and public safety by preventing him from displaying the colors of two major gangs. (See *Sheena K.*, *supra*, 40 Cal.4th at p. 890.)¹⁰

DISPOSITION

The portion of the restitution order related to gas costs, parking and bridge tolls, and lost wages, totaling \$3,350, is reversed and the matter remanded to the juvenile court for further proceedings consistent with the views expressed in this opinion. The orders appealed from are otherwise affirmed.

Kline, P.J.

We concur:

Haerle, J.

Richman, J.

¹⁰ Appellant asserts, for the first time on appeal, that, “[t]o the extent that the court [was concerned that appellant associated with Nortenos or Surenos] because appellant or co-minor have Latino names, . . . this order violates equal protection principles under the federal and state constitutions as an impermissible race-based classification and must be stricken.” Because this contention was not raised in the trial court, we will not consider it now. (See *People v. Saunders* (1993) 5 Cal.4th 580, 589-590.)