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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B235841

(Los Angeles County  
Super. Ct. No. MJ20022)

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

A. C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Robin Kessler, Judge. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Toni R. Johns Estaville, Deputy Attorneys General for Plaintiff and Respondent.

Appellant A. C. (minor) appeals from a dispositional order of the juvenile court, challenging the amount of restitution he was ordered to pay for graffiti removal. We affirm the judgment.

### **BACKGROUND**

The juvenile court declared minor a ward of the court after sustaining a petition filed pursuant to Welfare and Institutions Code section 602,<sup>1</sup> alleging that minor had committed felony vandalism in violation of Penal Code section 594, subdivision (a), and misdemeanor possession of tools to commit vandalism or graffiti, in violation of Penal Code section 594.2, subdivision (a).

After the juvenile court heard evidence that minor had unlawfully marked several areas in the City of Lancaster (City) with graffiti, the court considered evidence of the City's mitigation costs. Crime Prevention Officer Marleen Navarro testified that the City had developed a "graffiti cost model" to be used by the City to estimate the cost of graffiti removal for purposes of restitution orders. The cost model is based upon past clean-up efforts, including actual past expenditures for such items as labor, materials, equipment, fuel, and traffic control. The model divides the total annual cost by the number of graffiti removal efforts per year, resulting in an estimated cost of \$431.32 per removal. As there were four instances of graffiti in this case, the City requested restitution in the sum of \$1,725.28.

The juvenile court found true the allegations and sustained the petition. The court placed minor home on probation under various terms and conditions, including an order that minor pay \$1,500 in restitution to the City. Minor filed a timely notice of appeal.

### **DISCUSSION**

Minor contends that the trial court abused its discretion in setting the amount of restitution because the amount was not supported by substantial evidence. He argues that the evidence was insufficient because the prosecution relied upon the City's cost model

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

rather than evidence of the exact amount spent or incurred in the graffiti removal. Minor also contends that the court's error resulted in a denial of his due process guaranteed by the United States Constitution.<sup>2</sup>

We review the juvenile court's restitution order for abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132 (*Johnny M.*.) However, our review is de novo when the issue turns on the interpretation of a statute. (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016 (*Anthony M.*.) A challenge to the sufficiency of the evidence to support a juvenile court order is reviewed under the same standard of review applicable in an adult criminal appeal. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) In reviewing the evidence to support a restitution order, our authority begins and ends with a determination whether there is any substantial evidence to support the court's factual findings; we do not reweigh the evidence. (*People v. Millard* (2009) 175 Cal.App.4th 7, 27.)

“A victim's restitution right is to be broadly and liberally construed.’ [Citation.]” (*Johnny M., supra*, 100 Cal.App.4th at p. 1132; see also *In re G.V.* (2008) 167 Cal.App.4th 1244, 1250.) Subdivision (h) of section 730.6 provides in relevant part that the juvenile “court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. . . . A restitution order . . . shall be 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 . . . .”<sup>3</sup>

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<sup>2</sup> Respondent points out that minor both failed to object to Officer Navarro's testimony of the cost model and make a federal due process claim in the juvenile court. Thus the claim may be considered only as “an additional legal consequence of the asserted [state] error . . .” if at all. (*People v. Partida* (2005) 37 Cal.4th 428, 438-439.)

<sup>3</sup> Subdivision (j)(2) of section 760.6 provides that “victim” includes “[a]ny governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti [resulting in] an economic loss as the result of a violation of [Penal Code] Section 594 . . . .”

Minor contends that section 730.6, subdivision (h)(1), limits restitution to the exact amount a victim has expended or incurred to repair the damage because it provides that “[t]he value of . . . damaged property shall be . . . the actual cost of repairing the property when repair is possible.” Contrary to minor’s contention, exact and actual are not synonymous in this context; so long as the amount is not “arbitrary or capricious, “there is no requirement the restitution order be limited to the exact amount of the loss . . .” [Citation.]’ [¶] Indeed, the 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.’ . . .” . . . .” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391-1392, fns. omitted.)

Minor’s reliance on *Anthony M.*, *supra*, 156 Cal.App.4th 1010, is misplaced. There, the juvenile court had ordered restitution of amounts paid to a medical provider, more than \$1 million although the medical provider had accepted a lesser amount as payment in full from Medi-Cal. (*Id.* at p. 1018.) Because the provider was precluded by law from seeking reimbursement from the victim, the victim could not be said to have incurred those amounts. (*Ibid.*) There are no such facts here.

Minor argues that the City’s cost model was inherently unreliable and its use arbitrary because it did not reflect the actual cost specifically attributed to the damage caused by minor in this case. We reject minor’s contention that an estimate of costs can never support a restitution award, as well as the suggestion in such an argument that the victim must make the repairs before submitting evidence of the cost. Estimates are often the basis of restitution awards. (See, e.g., *In re Alexander A.* (2011) 192 Cal.App.4th 847, 851-852 [garage estimate for repairs to vandalized automobile]; *People v. Phu* (2009) 179 Cal.App.4th 280, 284-285 [estimated value of electrical power stolen by defendant for a marijuana growing operation based on “best information” available]; *People v. Ortiz* (1997) 53 Cal.App.4th 791, 800 [estimated value of counterfeit tapes].)

Moreover, minor did not object to the cost model or to Officer Navarro's testimony, but merely argued that the cost model was insufficient evidence of the City's exact expenditure to remove minor's graffiti. We agree with respondent that the cost model was a rational method to determine the City's economic loss in removing the graffiti. A repair estimate based upon similar past expenditures and on such components as labor and materials known to have been a part of those expenditures is not arbitrary, as minor contends. Rather, it is factual and rational, and consistent with the requirements. (See *Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132.)

Officer Navarro testified that the cost model was an estimate of the actual cost of cleaning minor's graffiti, based upon the actual costs of past clean-ups. We conclude that the City's analysis was a sufficient prima facie showing of the actual cost to remove the graffiti. The burden then shifted to minor to demonstrate that the City's cost was some other amount. (See *People v. Gemelli* (2008) 161 Cal.App.4th 1539,1543; *In re S.S.* (1995) 37 Cal.App.4th 543, 546-547.)<sup>4</sup> As minor submitted no evidence to refute the City's cost estimate, he did not meet his burden.

We conclude that the juvenile court did not abuse its discretion in accepting the City's prima facie showing. Because the trial court did not err, we do not reach minor's constitutional claim. (See *People v. Partida*, *supra*, 37 Cal.4th at p. 439.)

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<sup>4</sup> Minor contends that adult restitution cases arising from Penal Code section 1202.4 are inapplicable to determine the quantum of proof required under Welfare & Institutions Code section 730.6. We disagree. Because Welfare & Institutions Code section 730.6 parallels Penal Code section 1202.4, the extensive case authority regarding adult restitution may provide relevant discussion. (*Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132.)

**DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
DOI TODD