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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA OTIS VANCE,

Defendant and Appellant.

C067167

(Super. Ct. No.  
CM030187)

A jury convicted defendant Joshua Otis Vance of committing lewd acts on a minor under the age of 14. The trial court placed defendant on five years of formal probation subject to various conditions, including paying restitution totaling \$15,523.80 to the victim's mother and \$10,000 to the victim's father.

On appeal, defendant contends the trial court violated his due process right to a restitution hearing, and the restitution award was an abuse of discretion. We agree with his first

contention. Accordingly, we shall reverse the restitution order and remand for a restitution hearing.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

We briefly summarize the facts of defendant's crime, which need not be considered to resolve his claims on appeal.

In 2007, 13-year-old N.H. went to Oroville to visit her uncle and her 17-year-old cousin, Chelsea. While in Oroville, at a party, N.H. drank beer and became incapacitated. While she was incapacitated, defendant sexually assaulted her. N.H. told Chelsea about the assault several months later, and told her parents about five months after the assault.

After the trial, N.H.'s parents submitted a request for restitution. The request alleged in part that the father had missed 45 days of work taking N.H. to counseling. He asked for \$200 in compensation per missed workday, for a total of \$9,000. The mother claimed to have missed 45 days of work for counseling at \$250 a day, for a total of \$11,250. The parents also requested restitution for time off work to take N.H. to counseling in the future, claiming 90 days off at \$200 a day, for \$18,000. They further requested compensation for five days of court appearances totaling \$1,000 in lost wages for the father, \$1,250 in lost wages for the mother, and \$3,000 in "[g]las, where [sic] tear on [v]ehicle." Finally, the parents requested payment for an additional two years of counseling, consisting of 96 sessions at \$148 per session, for a total of \$14,208.

The probation report noted there was no documentation supporting the parents' restitution request for lost wages and future counseling sessions. The report suggested: "The Court may consider conducting a Restitution Hearing to determine the amount of restitution owed by the defendant to the victim and her parents."

The trial court elicited the parties' views on victim restitution at the sentencing hearing. Defense counsel requested "some kind of hearing or prehearing notification what the claims actually are as to whether they're present claims or claims for future or whatever it is so that we can at least understand what it is the Court's considering." The People argued for an immediate order. The People informed the court that the parents' claims were "well-founded."

After the People explained the request for restitution in greater detail, the trial court asked if there were objections. Defense counsel said she would submit the matter based on her previous comments, adding: "This two-page letter or three-page whatever it is shows no basis. In fact, it's just a claim. And I'm certainly not going to stipulate that just because somebody has filed a claim with the Court that the court ought to go ahead and order it."

The trial court then asked defense counsel if she was requesting a hearing. Counsel replied that she was. The People again encouraged the court *not* to hold a hearing, opining (incorrectly) that none was necessary.

The trial court reserved jurisdiction over whether to order restitution for future expenses, and ordered \$15,523.80 restitution for the victim's mother, consisting of \$11,250 for missed work, \$3,000 for travel expenses, \$1,250 for lost wages, and \$23.80 for postage. The court further ordered \$10,000 restitution to the father for missed work.

#### **DISCUSSION**

Defendant contends the trial court violated his due process rights by denying his request for a restitution hearing, a point the People concede. Defendant also contends the restitution award was an abuse of discretion. Because we agree with his first contention, we need not address his second.

"The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution." (Pen. Code, § 1202.4, subd. (f)(1).) Due process guarantees the defendant notice of the amount of the restitution claimed and an opportunity to challenge the figures in the probation report. (*People v. Cain* (2000) 82 Cal.App.4th 81, 86.)

The victim's parents sought considerable restitution and did not document the majority of their claims. The probation report recommended a restitution hearing, and defendant repeatedly asked for a hearing at sentencing. Ordering restitution without allowing defendant to challenge the requested amounts by way of an evidentiary hearing violated defendant's due process rights.

**DISPOSITION**

The restitution order is reversed and vacated. The matter is remanded to the trial court with directions to conduct a restitution hearing. In all other respects, the judgment is affirmed.

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DUARTE, J.

We concur:

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NICHOLSON, Acting P. J.

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HOCH, J.