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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Sacramento)**

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In re DAVID R., a Person Coming  
Under the Juvenile Court Law.

C068250

THE PEOPLE,

(Super. Ct. No. JV129860)

Plaintiff and Respondent,

v.

DAVID R.,

Defendant and Appellant.

Appellant, minor David R., appeals an order of the juvenile court requiring him to pay \$1,010 in victim restitution jointly and severally with one co-offender: He contends the court erred in failing to hold a third co-offender equally liable for the victim restitution.

We disagree and shall affirm the restitution order.

## FACTUAL AND PROCEDURAL BACKGROUND

According to the probable cause declaration filed by Sacramento police, an officer driving through the Land Park area of Sacramento in November 2010 saw a vehicle parked with its hood up; a records check showed the car had been stolen earlier that day. The officer saw three male minors around the car. David R. was seated in the driver's seat, on a flathead screwdriver, and the ignition had been "punched." The two other minors, K.K. and R.J., appeared to be working on the car engine, which was still warm, and "they were holding pliers, a screwdriver, and a wrench."

All three minors were detained and wardship petitions were filed.<sup>1</sup> Pursuant to a plea agreement, David R. admitted he had received a stolen vehicle, a misdemeanor, and was placed on probation. (Pen. Code, § 496d, former subd. (a).) R.J. also admitted receiving a stolen vehicle, while K.K. admitted committing the misdemeanor offense of tampering with a vehicle, in violation of Vehicle Code section 10852.

The court ordered that all three minors be held jointly and severally liable for payment of the full amount of restitution due the car's owner but, as the victim had not yet submitted a statement of loss, the court retained jurisdiction to determine the amount. After the probation department filed a memorandum in which the victim claimed losses of \$1,340 (for towing, door

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<sup>1</sup> David R. had previously been adjudicated a ward of the court for prior offenses.

locks, repair to the steering column, and one tire, the court held a contested restitution hearing.

At the hearing, K.K. argued he should be severed from any obligation to pay restitution. He submitted police reports (copies of which are not in the record on appeal), and argued the reports show he was merely seen "walking from the passenger area of the vehicle. The officer never saw [K.K.] in possession, inside the vehicle, or exercising any dominion and control over the vehicle, except that the minor was peering under the hood. The minor also [in the police report] makes a statement to the officer that he did not know the vehicle was stolen. That he was merely rendering aid to the person behind the wheel." In sum, K.K. argued, the victim's vehicle was already incapacitated (it had a flat tire) when he walked up to it, and no damage to the car is attributable to K.K.'s conduct within the meaning of the restitution statute. (Welf. & Inst. Code, § 730.6.)<sup>2</sup>

The prosecutor opposed K.K.'s attempt to be relieved of his joint and several obligation to pay restitution. She argued all three minors had tools at their disposal and asserted control over the car, and K.K.'s conduct—tampering—is reasonably related to the restitution sought. Moreover, she rejected as incredible K.K.'s statement he did not know the car was stolen, because the engine was still warm.

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<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

The court reviewed the police reports and stated it would impose that restitution incurred by the victim "as a result of" the minors' conduct, within the meaning of section 730.6, subdivisions (a)(1) and (h). As to K.K., the court reasoned, "The only evidence I have is he walks up [and says], 'Hey, what's up?' He claims he doesn't know the car is stolen, and does not appear to have been the—to have exerted the same kind of control over the car as the . . . other two minors." Accordingly, the court "carve[d] out" K.K. from the previous order holding all three equally responsible for paying restitution, and instead ordered that only David R. and R.J. pay restitution. The court ordered those two minors to pay the victim a total of \$1,010, including towing expenses, and costs associated with replacing or repairing the door locks, and steering mechanism.

After the award, counsel for David R. challenged the court's analysis of K.K.'s culpability, and argued the probable cause declaration supported holding K.K. jointly and severally liable for the victim's losses.<sup>3</sup> The trial court did not change its order, but suggested David R. might later bring a small claims action against K.K. for contribution.

### **DISCUSSION**

"Generally, an order of restitution will not be overturned in the absence of an abuse of discretion. [Citation.] The

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<sup>3</sup> We reject the Attorney General's suggestion David R. has forfeited his right to raise this issue on appeal.

court abuses its discretion when it acts contrary to law [citation] or fails to '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.'" (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016 [juvenile court erred by ordering restitution for medical expenses in excess of actual amount expended or incurred]; see also *In re T.C.* (2009) 173 Cal.App.4th 837, 843.)

The minor argues that the juvenile court erred in severing K.K. from the obligation to pay victim restitution and abused its discretion by refusing to impose joint and several liability upon all three co-offenders.<sup>4</sup>

Section 731, subdivision (a)(1) authorizes the juvenile court to order restitution as part of a ward's rehabilitation. In section 730.6, subdivision (a)(1), the Legislature has declared its intent "that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor."

The economic loss must be "as a result of" the minor's conduct. (§ 730.6, subd. (a)(1).) This is the language of

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<sup>4</sup> The parties agree that David R. has standing to challenge the order severing K.K. from joint and several liability for victim restitution. We agree: The order deprived David R. of the right to seek contribution from K.K. (Cf. *People v. Madrana* (1997) 55 Cal.App.4th 1044, 1049-1052; *In re S.S.* (1995) 37 Cal.App.4th 543, 548-550.)

causation. And, as this court explained in *In re T.C., supra*, 173 Cal.App.4th 837, "the reference to 'the minor's conduct' [in section 730.6, subdivision (a)(1)] refers to the precedent phrase defining the conduct: '*conduct for which a minor is found to be a person described in Section 602 . . . .*' ([Citation], italics added.) Thus, subdivision (a)(1) of section 730.6 mandates that a minor must pay restitution where conduct for which the minor is declared a ward of the court under section 602 results in economic loss to the victim." (*In re T.C., supra*, at p. 844.) This interpretation is borne out by subdivision (h) of section 730.6, which provides that restitution under the statute "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 for which the minor was found to be a person described in Section 602 . . . .*" (§ 730.6, subd. (h), italics added.)

In exercising its discretion, the juvenile court should consider the responsibility of co-offenders. (§ 730.6, subd. (h)(4) ["When feasible, the court shall also identify on the court order, any co[-]offenders who are jointly and severally liable for victim restitution."].) But the law does not impose "rigid guidelines" for apportionment of restitution. (*In re Brian S.* (1982) 130 Cal.App.3d 523, 533.) The underlying principle, however, is that "the juvenile court is vested with discretion to apportion restitution in a manner which will effectuate the legislative objectives of making the victim whole

and rehabilitating the minor." (*In re S.S.*, *supra*,  
37 Cal.App.4th at p. 549.)

Applying these principles, we find no grounds for reversal.

The trial court did not err in finding Welfare and Institutions Code section 730.6 did not require co-offender K.K. to pay restitution to the victim. The conduct for which K.K. was "found to be a person described in [Welfare and Institutions Code] [s]ection 602" was "tampering" with the victim's car, in violation of Vehicle Code section 10852. Vehicle Code section 10852 states that "[n]o person shall either individually or in association with one or more other persons, wilfully injure or tamper with any vehicle or the contents thereof or break or remove any part of a vehicle without the consent of the owner." The word "tamper" in this statute means "to 'interfere with'" and interference "includes conduct which is broader in scope than merely damaging a vehicle, for it encompasses any act inconsistent with the ownership thereof." (*People v. Anderson* (1975) 15 Cal.3d 806, 810.) Thus, although K.K.'s wardship petition was sustained based on his admission he "tampered" with the victim's car, that admission did not require the court to infer that K.K.'s conduct caused any damage to the car or its contents. (*Id.* at pp. 810-811.) Welfare and Institutions Code section 730.6 requires the juvenile court to order restitution only if the minor's conduct "for which [he was] found to be a person described in [Welfare and Institutions Code] [s]ection 602" (Welf. & Inst. Code, § 730.6, subd. (a)(1)) results in an

economic loss to the victim. Because K.K.'s Welfare and Institutions Code section 602 conduct did not, as a matter of law, result in an economic loss to the victim, the juvenile court was not required by Welfare and Institutions Code section 730.6 to order co-offender K.K. to pay restitution to the victim, as David R. argues.

Nor did the trial court abuse its discretion, when evaluating whether K.K.'s conduct caused the victim's loss, by considering evidence of K.K.'s conduct underlying his admission of the tampering charge, including police reports of the incident, and K.K.'s statements to police. (Cf. *In re S.S.*, *supra*, 37 Cal.App.4th at p. 549.) And, as that evidence is not in the record on appeal, we must presume it supports the trial court's conclusion. (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737 [reviewing courts must presume the evidence supports every finding of fact and the appellant must state fully, with transcript references, the evidence claimed to be insufficient to support the findings]; see *People v. Baker* (2005) 126 Cal.App.4th 463, 469 [standard of proof at a restitution hearing is a preponderance of the evidence].) Under these circumstances, we cannot consider David R.'s argument that the trial court's finding K.K.'s conduct did not cause damage to the victim's car was "unsupported by the evidence" simply because competing evidence (i.e., the probable cause declaration) indicated K.K. was holding tools and appeared to be working on the car engine.

In sum, restitution awards are vested in the trial court's discretion and will be disturbed on appeal only where an abuse of discretion has been shown. David R. has shown neither that the restitution order was contrary to section 730.6, nor that the juvenile court otherwise abused its discretion. Accordingly, we shall affirm the order.

**DISPOSITION**

The juvenile court's victim restitution order is affirmed.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.