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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

ELFEGO EDGAR CUEVAS,

Defendant and Appellant.

C078386

(Super. Ct. No. P13CRF0437)

Convicted of continuous sexual abuse of a minor, defendant Elfego Edgar Cuevas appeals the award of restitution for relocating the minor and her family. Defendant contends the trial court abused its discretion in issuing the award because there was no evidence the victim's relocation was related to defendant's criminal conduct and there was no statement from either a mental health professional or a law enforcement officer indicating the relocation was necessary for the minor's emotional well-being or physical safety.

We agree the court erred in issuing the award without the statutorily required statement from either a law enforcement officer or a mental health professional and remand the matter for further proceedings.

BACKGROUND

Defendant pled no contest to the continuous sexual abuse of a minor. The trial court sentenced defendant to six years in state prison, awarded him 240 days of custody credit, and ordered him to pay various fines and fees. The trial court later indicated it would order defendant to pay \$2,000 in restitution to the California Victim Compensation Program, because they had paid \$2,000 in relocation costs to move the victim and her family, unless defendant objected to the award. Defendant objected to the award.

In support of the award, the People presented a letter from the probation department indicating the California Victim Compensation Program was seeking \$2,000 for relocation costs, but the victim was seeking no restitution. Attached to the letter was a single page, computer printout titled “CaRES - Application Summary of Benefit Limits” (CaRES summary). The printout indicated that \$2,000 was paid to the “claimant” for relocation costs.¹ The People submitted the matter on the letter and the CaRES summary.

Defendant argued the documents were hearsay. Defendant also argued the court could not issue the award because there was no statement from either a law enforcement officer or a mental health professional stating the relocation was necessary for the victim’s physical safety or emotional well-being, as required by Penal Code² section 1202.4, subdivision (f)(3)(I). The trial court overruled defendant’s hearsay objection and the People argued the fact that the victim, a child, was sexually abused in

¹ The document is redacted. Presumably, the claimant is the victim or her mother.

² Undesignated statutory references are to the Penal Code.

her home is sufficient evidence that she needed to relocate for her emotional well-being. The trial court agreed with the People.

The trial court found the sexual abuse in and of itself “puts a substantial hardship on the victim who wanted to move away from the location.” The court also considered the protective order issued as a result of defendant’s criminal conduct and the mother’s statement regarding the impact that defendant’s crimes had on her children.

DISCUSSION

Defendant contends the trial court abused its discretion by ordering him to pay \$2,000 for relocation costs as restitution without sufficient evidence to support the ruling. The People argue the CaRES summary combined with the mother’s impact statement, was sufficient evidence to support the restitution order. Defendant has the better argument.

The governing statute allows restitution for “[e]xpenses incurred . . . in relocating away from the defendant,” but it specifies that such expenses “*shall* be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for emotional well-being of the victim.” (§ 1202.4, subd. (f)(3)(I), *italic added*.)

The only “evidence” before the court at the restitution hearing was the CaRES summary and the mother’s statement. Relative to relocation costs, the CaRES summary says only that \$2,000 was paid to the claimant, and the mother’s statement referenced her own observation that defendant’s crimes had significantly impacted her children. However, there is no statement from a law enforcement officer that relocation was necessary for the victim’s personal safety, nor was evidence presented from any mental health professional that relocation was necessary for the victim’s emotional well-being.

The trial court believed the CaRES summary, the criminal protective order issued, and the statement by the victim’s mother was sufficient evidence to support the order. The Legislature, however, specified that a statement from either a mental health

