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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

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

THE PEOPLE,

Plaintiff and Respondent,

v.

EDUARDO R.,

Defendant and Appellant.

D063175

(Super. Ct. No. J231691)

APPEAL from a judgment of the Superior Court of San Diego County,
Carolyn M. Caietti, Judge. Affirmed.

Dawn S. Mortazavi, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr. and Susan Miller,
Deputy Attorneys General, for Plaintiff and Respondent.

Eduardo R. admitted to four counts of vandalism (Pen. Code, § 594, subds. (a), (b)(1); counts 1-4), and the court dismissed the remaining counts. The court declared Eduardo a ward of the court and placed him on formal probation. (Welf. & Inst. Code,¹ § 602.) At a restitution hearing, the court ordered Eduardo and his father jointly and severally to pay the City of Vista (City) \$41,222 for restitution and \$210 for witness testimony and travel expenses. The next day, the court reduced the restitution amount to \$34,307 after it subtracted inappropriately awarded investigatory costs.

Eduardo appeals, contending the evidence was insufficient to support many claimed losses in the restitution order. Eduardo further contends the court abused its discretion and violated Eduardo's due process rights when it awarded a restitution amount without considering Eduardo's or his parents' ability to pay. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The court held a restitution hearing to determine the costs the City incurred to remove Eduardo's 95 incidents of graffiti damage. The court awarded restitution costs based on a calculation by Chuck Crist, director of the public works department for the City. Crist testified at the restitution hearing that he prepared a graffiti abatement matrix to determine the cost to the City to clean up Eduardo's graffiti. Based on the matrix, Crist determined the cost to clean graffiti from an area less than 10 feet was \$433. The \$433 calculation consisted of the following costs: \$20 for abatement supplies, \$125 for truck and equipment expenses, a \$54 hourly rate for the field personnel and crew chief who

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

remove the graffiti, a \$24 hourly rate for clerical personnel who handle the service request orders, complaints and inquiries, a \$60 hourly management fee for supervisors who oversee cleanup crews, a \$94 administrative fee for the cost of radios, cell phones and computers, \$15 for "shop overhead" for abatement material storage, \$8 for safety equipment and uniforms for cleanup employees, a \$33 hourly crew rate, and the investigative costs, which the court later removed. At a cost of \$433 per incident, Crist calculated that it would cost the City \$41,222 to clean up Eduardo's 95 incidents of graffiti.

Crist further testified that if City trucks were not used for graffiti abatement, the City would use them to assist City pothole crews and storm water crews for other purposes like litter collection and weed abatement. He testified that the City could use City personnel for numerous jobs if those personnel were not engaged in graffiti abatement. For example, the City could use its personnel and equipment engaged in graffiti abatement to assist the City's very lean pothole crew. Crist testified the City could also use management personnel engaged in graffiti abatement for other City functions.

Eduardo submitted a written opposition to the restitution amount. At the restitution hearing, he contended the truck expenses and administrative fees were excessive, and the award is more punitive than rehabilitative. However, the court held

the People met their burden of proving by a preponderance of the evidence the restitution amount the City requested.²

DISCUSSION

I

THE EVIDENCE WAS SUFFICIENT FOR THE RESTITUTION AWARD

Eduardo contends the restitution award must be vacated and remanded because the evidence was insufficient to support many claimed losses in the restitution order. We disagree.

A juvenile court may order restitution as part of a ward's rehabilitation. (§ 731.) The award must 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," unless the court finds compelling and extraordinary reasons for not doing so. (§ 730.6, subd. (h).) "[T]he 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 for rehabilitation." (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391-1392.) The court has discretion to assess the value of the damaged property at its replacement cost or its actual cost of repair (§ 730.6, subd. (h)(1)), and it has broad discretion to consider information and the source of that information when assessing costs. (*People v. Foster* (1993) 14 Cal.App.4th 939, 947; superseded by statute on another ground.) The restitution amount must not be arbitrary or capricious, however

² The court later reduced the award to \$34,307 after it subtracted \$7,125 for investigatory costs, which are not recoverable.

" [t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action.' " (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 800 (*Ortiz*.)

Restitution is based on losses claimed by the victim. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 885-886 (*Fulton*.) If the victim makes a prima facie showing that the defendant's conduct caused actual loss to the victim, the defendant has the burden to disprove the claimed losses. (*Ibid.*) If the defendant fails to disprove the victim's claimed losses, the court may base its restitution order on those claimed losses. (*Ibid.*; *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542-1543.) A court may base the restitution award on an estimate. (See *In re Alexander A.* (2011) 192 Cal.App.4th 847, 851-852 [approving garage's estimate for repairs to vandalized automobile]; *People v. Phu* (2009) 179 Cal.App.4th 280, 284-285 [approving estimated value of electrical power stolen by defendant on "best information" available]; *Ortiz, supra*, 53 Cal.App.4th at p. 800 [approving estimated value of counterfeit tapes].)

Here, the victim, the City, used Crist's testimony to establish a prima facie showing that the defendant's conduct caused actual loss to the City. Crist testified he used a graffiti abatement matrix to estimate the cost to clean up Eduardo's graffiti, thus the court's restitution order of the amount calculated by Crist was consistent with the requirement that a restitution order "fully reimburse" the victim for its economic losses "based on the amount of loss claimed by the victim." (§ 730.6, subd. (h); *Fulton, supra*, 109 Cal.App.4th at pp. 885-886.) The burden then shifted to Eduardo to present evidence

to disprove the claimed amount. (See *ibid.*) Eduardo argued the restitution amount was excessive and more punitive than rehabilitative, however he presented no evidence to dispute Crist's testimony. Thus, Eduardo failed to show the trial court abused its discretion when it based the restitution award on Crist's testimony.

On appeal, Eduardo contends the court abused its discretion when it based its restitution order on Crist's testimony because there was no evidence of costs for traffic control or sandbagging for each particular act of vandalism, and there was no evidence to justify a two-hour truck rental fee for each act of vandalism. However, restitution is not limited to the exact amount of the damage caused by Eduardo, and the court may use any rational method to fix the restitution amount. (*Ortiz, supra*, 53 Cal.App.4th at p. 800; *People v. Foster, supra*, 14 Cal.App.4th at p. 947.) Further, since a court may base a restitution award on an estimate (see *In re Alexander A., supra*, 192 Cal.App.4th at pp. 851-852), and Eduardo presented no evidence to dispute the estimate, the court did not abuse its discretion when it based the restitution amount on Crist's testimony.

II

EDUARDO FORFEITED HIS DUE PROCESS VIOLATION CLAIM

Eduardo further contends the court abused its discretion because it violated Eduardo's due process rights when it failed to consider Eduardo's or his parents' ability to pay the restitution amount, thus the order should be vacated and remanded. We disagree.

A defendant forfeits the right to raise an issue on appeal when he or she does not object in the trial court. (*People v. Nelson* (2011) 51 Cal.4th 198, 227 ["At the time of his 1995 crime and his 2000 sentencing, the law called for the court to consider a

defendant's ability to pay in setting a restitution fine, and defendant could have objected at the time if he believed inadequate consideration was being given to this factor"], citing *People v. Gamache* (2010) 48 Cal.4th 347, 409 [claim that trial court failed to consider ability to pay restitution fine was forfeited].) Forfeiture extends to claims based on violations of fundamental constitutional rights. (*In re Seaton* (2004) 34 Cal.4th 193, 197-198, citing Pen. Code, § 1259.)

Eduardo failed to raise a due process issue that the juvenile court failed to consider Eduardo's or his parents' ability to pay the restitution amount, thus Eduardo forfeited this issue on appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.