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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

E055815

(Super.Ct.No. INJ1100347)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence Best,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Andrea S. Bitar, 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, Garrett Beaumont and Teresa
Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

On June 7, 2011, the Riverside County District Attorney filed a Welfare and Institutions Code section 602 petition, alleging that appellant and defendant C.C. (minor) committed battery. (Pen. Code, § 242.) On June 22, 2011, the district attorney filed a second petition alleging that minor committed misdemeanor vandalism, causing damage of \$400 or more. (Pen. Code, § 594, subd. (b).) Minor admitted the allegations in both petitions. The juvenile court placed him on probation, pursuant to Welfare and Institutions Code section 725, subdivision (a), in his mother's home. One of his probation conditions prohibited him from possessing graffiti/scrubbing instruments, including ink markers. Subsequently, the district attorney filed a third petition alleging that minor possessed a felt tip marker or other marking substance with the intent to commit vandalism and graffiti. (Pen. Code, § 594.2.)¹ After a contested hearing, the court found the allegation true and placed minor on probation for six months and continued him in his mother's custody. The court ordered him to pay several restitution fines, including a \$500 fine for the damage done to a mailbox in connection with the June 22, 2011 petition.

On appeal, minor contends: (1) there was insufficient evidence to support the court's true finding that he possessed permanent markers with the intent to commit vandalism or graffiti; and (2) there was insufficient evidence to support the \$500 restitution fine. We affirm.

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

FACTUAL BACKGROUND

Prosecution Evidence

At the contested jurisdictional hearing, Officer Chris Trueblood testified that on the afternoon of August 1, 2011, he was dispatched to a park. He was advised that a passerby had reported seeing juveniles tagging in that area. When he arrived at the park, he noticed a group of about five juveniles hanging around the tennis courts. He observed what appeared to be fresh tagging on the wall and on the ground of the tennis court, almost directly next to where the juveniles were sitting. He also noticed five to seven permanent markers on the ground. The markers were various colors, including black. The fresh tagging was in black marker. Officer Trueblood approached the group and heard one of them yell, "Cops." He then noticed minor attempt to leave the tennis courts on a scooter. He yelled at minor to stop, and minor complied. Officer Trueblood and his partner lined the juveniles up against the wall and searched them. Officer Trueblood's partner searched the backpack that minor had on him. Inside the backpack, he found numerous permanent markers of various colors, including black, that were similar to the type found on the ground.

Defense Evidence

On cross-examination, Officer Trueblood confirmed that minor did not have any markers in his hands, just in his backpack. Minor's mother testified and said that minor regularly carried art supplies with him, including markers, and that he was in an art class at school. She also said he was not allowed to have permanent markers in his possession under the terms of his probation.

ANALYSIS

I. There Was Sufficient Evidence to Support the Court's True Finding

Minor contends there was insufficient evidence to support the court's true finding that he possessed permanent markers with the intent to commit vandalism or graffiti. We disagree.

A. *Standard of Review*

“[I]n considering a claim of insufficiency of the evidence, appellant has a heavy burden in demonstrating that the evidence does not support the juvenile court findings. [Citation.] An appellate court must review the whole record in the light most favorable to the judgment in order to determine whether it discloses substantial evidence that a reasonable trier of fact could find the essential elements of the crime beyond a reasonable doubt.” (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1136 (*Ricky T.*))

“Evidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction. [Citations.] ‘Whether the evidence presented at trial is direct or circumstantial, . . . the relevant inquiry on appeal remains whether *any* reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.’ [Citation.]” (*People v. Bloom* (1989) 48 Cal.3d 1194, 1208.)

B. *The Evidence Was Sufficient*

A person violates section 594.2, subdivision (a), by possessing “a felt tip marker, or any other marking substance with the intent to commit vandalism or graffiti.” Minor claims that there was insufficient evidence of his intent to vandalize, and that the

prosecution's argument impermissibly hinged on his mere presence at the scene. We disagree.

The circumstantial evidence in this case was sufficient to support the court's finding that minor possessed the permanent markers in his backpack with the intent to commit graffiti. The police responded to a report that someone saw some juveniles creating graffiti in a park. The police found minor and four other juveniles sitting next to what appeared to be fresh graffiti drawn with black permanent markers on the wall and ground of the tennis court. There were several permanent markers on the ground. The police also found permanent markers, including black ones, inside minor's backpack, and they were similar to the type found on the ground. Moreover, when the police approached the group, one of them yelled, "Cops," and minor immediately tried to escape the scene. Although minor's mother testified that he often carried art supplies with him, we note that he was not allowed to have permanent markers in his possession under the terms of his probation in another case.

Viewing the record in the light most favorable to the judgment, as we must, we conclude that the evidence was sufficient to support the court's true finding. (See *Ricky T.*, *supra*, 87 Cal.App.4th at p. 1136.)

II. The Court Properly Ordered Minor to Pay Victim Restitution

Minor argues the court abused its discretion in ordering \$500 in victim restitution, since there was insufficient evidence to support that amount. We find no abuse of discretion.

A. Relevant Background

The court held a disposition hearing on minor's three petitions. With regard to minor's June 22, 2011 petition, he had previously admitted that he and his friends drove around a neighborhood hitting mailboxes with a sledgehammer. According to the police report, 14 mailboxes were damaged. The probation report stated that one of the victims, William S. (the victim), submitted "a request for \$500.00 for damages." Defense counsel objected that there were no receipts to support the amount claimed. After some discussion, defense counsel stated that he and the prosecutor would meet informally for the prosecutor to provide some substantiation for the claim. The court responded that if there was a reason to contest the amount, it would have no problem setting another hearing to discuss it. Noting the victim's claim, the court ordered the \$500 amount, subject to further review. No further review was undertaken.

B. Standard of Review

The standard of review of a restitution order is abuse of discretion. (*People v. Reichler* (2005) 129 Cal.App.4th 1039, 1045 (*Reichler*).)

C. The Court Did Not Abuse Its Discretion

Welfare and Institutions Code section 730.6, subdivision (a), states 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." Section 730.6, subdivision (h), directs the court to order restitution in "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." "[W]e observe that

[Welfare and Institutions Code] section 730.6 parallels Penal Code section 1202.4, which governs adult restitution.” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) The statute, by its terms, does not require any particular kind of proof. (See *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 [Fourth Dist., Div. Two] (*Gemelli*)). ““[T]he standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt.” [Citation.]” (*Id.* at p. 1542.)

“[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 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.’ . . .” . . . [¶] This is so because a hearing to establish the amount of restitution does not require the formalities of other phases of a criminal prosecution.” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391-1392, fns. omitted.)

In *People v. Foster* (1993) 14 Cal.App.4th 939 [Fourth Dist., Div. Two] (*Foster*), superseded on other grounds as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64, 70-71, the defendant argued that the Legislature “must have intended that determinations of value be based on evidence other than the victim’s uncorroborated statement.” (*Foster*, at p. 948.) This court disagreed. (*Ibid.*) We stated that “the trial court is entitled to consider the probation report when determining the amount of restitution. A property owner’s statements in the probation report about the value of her property should be accepted as prima facie evidence of value for purposes of restitution. [Citation.]” (*Id.* at p. 946; see also *Gemelli, supra*, 161 Cal.App.4th at p. 1543.)

This court further stated in *Gemelli, supra*, 161 Cal.App.4th 1539, that “[o]nce the victim makes a prima facie showing of economic losses incurred as a result of the defendant’s criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim. [Citation.] The defendant has the burden of rebutting the victim’s statement of losses, and to do so, may submit evidence to prove the amount claimed exceeds the repair or replacement cost of damaged or stolen property. [Citation.]” (*Id.* at p. 1543; see also *Foster, supra*, 14 Cal.App.4th at p. 947.)

Here, the probation report recommended payment of \$500 to the victim based on the victim’s statement, and it was up to minor to demonstrate this amount exceeded the repair or replacement cost. Minor pointed out that other victims were asking for \$20 or \$30, and that some of them were not claiming any amount. However, he did not submit evidence about the type of mailbox the victim owned or the extent of damage thereto, as compared to the other victims’ mailboxes. In other words, minor did not rebut the victim’s statement that it would cost that amount to fix or replace his mailbox.

Minor attempts to distinguish his case from *Foster* by asserting that in *Foster*, we primarily focused on the victim’s statement in a probation report “as related to due process, waiver, and ineffective assistance of counsel arguments, rather than an insufficient evidence argument.” Although *Foster* did concern those other issues, the defendant there also raised the argument that “the record must contain evidence of the replacement cost of the property.” (*Foster, supra*, 14 Cal.App.4th at p. 945.) In our discussion of that issue, this court noted that the trial court could properly consider the

victim's statements in a probation report as evidence when determining the proper amount of restitution. (*Id.* at p. 946.)

Minor further claims that the instant case is similar to *People v. Harvest* (2000) 84 Cal.App.4th 641. In that case, the trial court ordered restitution for burial expenses pursuant to two victims' claims. (*Id.* at p. 652.) The appellate court reversed one of the orders, noting that the first victim's family "could support their claim with documentation and stood ready to testify, but the [other] claim had neither of these supports." (*Id.* at p. 653.) Rather "[t]here was [just] mention of the . . . claim in the probation officer's report." (*Ibid.*) We note that in the instant case, there was more than just a "mention" in the probation officer's report. The report stated that, according to the police report, several mailboxes were damaged. It also stated: "The following victims: John H. (\$30), Donna P. (\$20) and William S. (\$500) desired prosecution" and, according to the victim services advocate, William S. submitted a request for \$500 for damages.² Thus, the probation officer recommended that minor pay restitution to victims John H., Donna P., and William S., in those amounts listed.

Furthermore, many decisions considering the issue of victim restitution agree with *Foster* that: absent contrary evidence from the defendant, a victim's statement of the amount of the loss reflected in the probation report is enough to support a restitution

² Minor asserts that the victim's statement in the probation report "was apparently double hearsay." However, minor never objected below on hearsay grounds. Furthermore, hearsay statements in a probation report may be admissible under the business records exception and/or the official records exception to the hearsay rule. (Evid. Code, §§ 1270-1272, 1280.)

order in the amount recommended in the report. (*In re S.S.* (1995) 37 Cal.App.4th 543, 547 [quoting *Foster*]; *People v. Hove* (1999) 76 Cal.App.4th 1266, 1275; *Keichler, supra*, 129 Cal.App.4th at p. 1048; *People v. Pinedo* (1998) 60 Cal.App.4th 1403, 1406; *People v. Collins* (2003) 111 Cal.App.4th 726, 734.) Minor here did not present below, or on appeal, evidence to disprove the amount of loss claimed by the victim. (*Gemelli, supra*, 161 Cal.App.4th at p. 1543.) Thus, on the record before us, we have no basis for finding the restitution amount unreasonable.

We conclude that absent contrary evidence, the victim’s statement of the amount of loss was sufficient to support the restitution order. The trial court did not abuse its discretion in ordering minor to pay \$500 in restitution to the victim.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

KING
J.