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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.B.,

Defendant and Appellant.

E057615

(Super.Ct.No. INJ1100247)

OPINION

APPEAL from the Superior Court of Riverside County. Charles Everett Stafford, Jr., Judge. Affirmed.

Stephanie Adraktas, 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, Charles C. Ragland and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court placed the minor on probation for six months and ordered him to pay the victim \$530 in restitution after it found true allegations that he drove the victim's two vehicles and stole his cell phone. The minor argues the court should reverse two of the three true findings and the restitution order. As discussed below, we affirm the judgment.

FACTS AND PROCEDURE

In December of 2010, 65-year-old Thomas Simrock hired the 14-year-old minor to walk his dogs for about one week while Simrock was in the hospital having cancer surgery and for about two weeks while Simrock recovered at home. Simrock gave the minor keys to Simrock's home and instructed the minor to come inside each day, get the dogs and walk them. Simrock did not give the minor permission to do anything else in his house. The keys to Simrock's two vehicles, a Jaguar convertible and a GMC Envoy sport utility vehicle, were hung on hooks inside the house. After returning home from the hospital, Simrock noticed some cash was missing from his house and on several occasions noticed his two vehicles were low on gas when they should not have been.

One day while he was home convalescing from surgery, Simrock got out of bed and noticed from inside the house that his Jaguar was missing. Simrock was getting ready to drive the Envoy around to look for the minor when the minor drove up in the Jaguar. The minor told Simrock that one of Simrock's dogs was running down the street and so he had taken the Jaguar to go look for the dog. The dog was in the Jaguar. The minor told Simrock that he had also driven the Envoy. The minor told Simrock that he

needed to take his sister to the hospital one day, and so he climbed over a wall and went in through Simrock's back door, which the minor knew to be unlocked, or a key was hidden, and got the keys to the Envoy from the house. This happened after Simrock had come home from the hospital.

Simrock told the minor he no longer wanted the minor to work for him. The next day Simrock noticed his cellular telephone was missing. Simrock at some point checked his telephone records and learned that, after the phone had been taken, it had been used to call the minor's father and other unknown numbers. The minor was the only person who was in Simrock's house in the days leading up to the cell phone going missing. On the same day that he found his phone was missing, Simrock checked the car keys that he kept hanging up in the house. He noticed that the remote key fob for the Jaguar was missing, the key for the Envoy had been replaced with a Cadillac key, and the remote key fob for the Envoy had been replaced with a blank. No one other than Simrock and the minor had been in Simrock's home in the preceding days.

The minor testified that he only used the cell phone with Simrock's permission, but he did not steal it. The minor testified that he never told Simrock that he had driven the Envoy in an emergency, and that the incident Simrock described, in which the minor drove the Jaguar with Simrock's dog in it, never happened. The minor testified that another neighbor had borrowed the Envoy with Simrock's permission, and that the minor had driven the car in a grocery store parking lot while the neighbor taught him to drive.

The minor testified that Simrock seemed frail and confused, and that a nurse visited Simrock every day after he returned from the hospital.

Palm Springs Police Officer Aguilera testified that on December 20, 2010, he responded to a call from the minor. The minor told him that Simrock made him uncomfortable because, on several occasions when the minor went to Simrock's home to walk his dogs, Simrock was walking around in only underwear. The minor stated that he quit working for Simrock because of this, and that Simrock then accused him of stealing a cell phone. The officer spoke with Simrock about the minor's accusations. Simrock told the officer that he believed the minor had taken several items from him. Simrock stated that he had let the minor make a call from his cell phone. After the officer spoke with Simrock, he re-interviewed the minor. The minor admitted to having made up the story to avoid getting into trouble, but was not specific about what parts he had made up. The minor denied taking the cell phone, but said he had used it several times with Simrock's permission. The minor eventually admitted that he had gone joyriding in Simrock's vehicles on several occasions without Simrock's permission.

The parties stipulated that if the minor's father was called to testify, he would testify that he had never spoken with Simrock about whether the minor had placed a call to his father on Simrock's cell phone.

On April 15, 2011, the People filed a petition under Welfare and Institutions Code section 602, alleging the minor committed two counts of misdemeanor unlawfully driving

or taking a vehicle (Veh. Code, § 10851) and one count of misdemeanor theft (Pen. Code, § 484, subd. (a)).

On January 9, 2012, the juvenile court placed the minor on informal probation under Welfare and Institutions Code section 654.2, with anticipated dismissal on June 22. The minor's father stated he was unhappy that the current prosecutor wanted the minor to agree to informal probation in exchange for not re-filing the allegations as felonies. The judge explained that the case "should have been filed as a felony to begin with" and offered to preside over a trial on the felony allegations instead of approving the informal probation. After the minor's counsel spoke with the minor's father off the record, the court approved the informal probation and set the restitution hearing for March 13, 2012.

The contested restitution hearing was held on March 13, 2012. Mr. Simrock testified about money he spent on a new cell phone, a kill switch for the Envoy, and having his house re-keyed. After hearing argument from both sides, the trial court set restitution at \$530.

At the review hearing held on June 22, 2012, the juvenile court revoked the minor's informal probation because the minor's father refused to pay the \$530 in restitution. Neither had the minor completed his 40 hours of community service. The court set a contested jurisdiction hearing for September 6, 2012.

On June 27, 2012, the People filed an amended petition charging the allegations as felonies.

The contested jurisdiction hearing was held on October 11, 2012, with the testimony described above by Mr. Simrock, the minor, and Officer Aguilara. At the conclusion of the hearing, juvenile court found the felony allegations true and sustained the petition.

The disposition hearing was held on November 27, 2012. On motion of defense counsel, the juvenile court declined to declare the minor a ward of the court, reduced the charges to misdemeanors and placed the minor on probation for six months under Welfare and Institutions Code section 725, subdivision (a). The terms of probation included payment of \$530 in restitution, 40 hours of community service, and not driving a car without a license, insurance, and registration . This appeal followed.

DISCUSSION

1. The True Finding That the Minor Drove the GMC Envoy is Supported by Evidence Independent of His Out-Of-Court Statements

Defendant argues the prosecution failed to establish the corpus delicti, with evidence independent of his admissions, for the offense of unlawfully driving Simrock's GMC Envoy. We disagree and uphold the true finding.

Corpus Delicti and the Standard of Review

“The purpose of the corpus delicti rule is to assure that ‘the accused is not admitting to a crime that never occurred.’” (*People v. Jones* (1998) 17 Cal.4th 279, 301, quoting *People v. Jennings* (1991) 53 Cal.3d 334, 368.) The corpus delicti or body of an alleged crime consists of (1) the fact of injury, loss or harm, and (2) the existence of a criminal agency as its cause. (*People v. Valencia* (2008) 43 Cal.4th 268, 296.) It has

long been the rule that the corpus delicti must be established independently of any extrajudicial statements or admissions of the defendant. (*People v. Crew* (2003) 31 Cal.4th 822, 836-837; *People v. Mehaffey* (1948) 32 Cal.2d 535, 544-545.) However, “the modicum of necessary independent evidence . . . is not great. The independent evidence may be circumstantial, and need only be ‘a slight or prima facie showing’ permitting an inference of injury, loss, or harm from a criminal agency, after which the defendant’s statements may be considered to strengthen the case on all issues.” (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1181.) The corpus delicti rule is satisfied ““by the introduction of evidence which creates a reasonable inference that [the harm] could have been caused by a criminal agency . . . even in the presence of an equally plausible noncriminal explanation of the event.” [Citation.]” (*People v. Ruiz* (1988) 44 Cal.3d 589, 611, citing *People v. Towler* (1982) 31 Cal.3d 105, 117.)

We review with deference a trial court’s determination that the corpus delicti for the crimes alleged in the charging document was established. We draw “every legitimate inference in favor of the [petition], and cannot substitute [our] judgment as to the credibility or weight of the evidence for that of the [trier of fact].” (*People v. Jones, supra*, 17 Cal.4th at p. 301.)

Here, the minor admitted to both Simrock and Officer Aguilera that he drove the Envoy without permission. The additional evidence used to establish that someone actually committed the crime of unlawfully taking or driving a vehicle is the following. The evidence shows someone drove the Envoy without Simrock’s consent because he

testified that gasoline was missing from the Envoy, that he never gave anyone permission to drive the Envoy, and that he discovered the key and the remote key fob for the Envoy were missing shortly after Simrock fired the minor.

Further, the evidence shows that the minor had access to the car keys Simrock kept in the house, both during Simrock's absence while at the hospital and while he was recovering at home. Finally, Simrock saw the minor driving his Jaguar without permission, which is circumstantial evidence from which it can be inferred that the minor also drove the Envoy, in that his opportunity to drive both vehicles was the same. While it could possibly be inferred that the missing gasoline was caused by something other than the cars being driven without permission, this was certainly a permissible inference from the evidence, and so we conclude that sufficient evidence supports the true finding that the minor unlawfully took or drove Simrock's GMC Envoy.

2. Sufficient Evidence Supports the True Finding That the Minor Stole the Cell Phone.

The minor argues the evidence presented at the contested jurisdictional hearing was insufficient to support the juvenile court's true finding on the theft charge. In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. (*People v. Maury* (2003) 30 Cal.4th 342, 403.) An appeal challenging the sufficiency of the evidence to support a juvenile court judgment is governed by the

same standards of review applicable to a similar claim by a criminal defendant. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.)

Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

To establish theft, the People needed to show that the minor took possession of Simrock's cell phone without his permission and with the intent to permanently deprive him of the phone. (*People v. Nazary* (2010) 191 Cal.App.4th 727, 741-742.) A defendant may be convicted of theft based solely on circumstantial evidence. (*People v. Hallman* (1973) 35 Cal.App.3d 638, 641.)

Here, the evidence supporting the true finding was the following. First, Simrock testified that he noticed the phone was missing the day after he fired the minor. Second, Simrock testified that he had not seen his phone for two or three days before he discovered it was missing. Third, Simrock testified that he checked his telephone records and found that the phone had been used to call the minor's father after it had been stolen. Fourth, Simrock testified that he did not give the minor permission to take his cell phone. Finally, Simrock testified that the minor had access to the inside of his home, and that the minor was the only person who came into his home during the period immediately before the phone went missing. While this testimony was contradicted in part by the minor's testimony that he did not steal the phone and that other people were in the house at the time it went missing and by the stipulated testimony of the minor's father that he never

spoke with Simrock about his phone number having been called on Simrock's phone after it went missing, the testimony of a single person is enough to establish the elements of theft, and that testimony is present here. Therefore, the true finding on this count is supported by sufficient evidence.

3. Sufficient Evidence and The Applicable Statutes Support the Restitution Order

The minor argues the \$530 restitution order must be reversed because: a) Simrock did not know the exact amounts he paid and therefore provided insufficient evidence to support the order; and 2) the amounts for re-keying the house locks and installing ignition kill switches on the vehicles are not compensable because the crimes were non-violent misdemeanors and the losses were not incurred as a result of the minor's crimes.

Welfare and Institutions Code section 730.6 provides 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." (Welf. & Inst. Code, § 730.6, subd. (a)(1).) "[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.) "A restitution order is reviewed for abuse of discretion and will not be reversed unless it is arbitrary or capricious. [Citation.] No abuse of discretion will be found where there is a rational and factual basis for the amount of restitution ordered." (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542 [Fourth Dist., Div. Two] (*Gemelli*)). "At the core of the victim restitution statutory scheme is the mandate that a victim who suffers economic loss is

entitled to restitution and that the restitution is to be ‘based on the amount of loss claimed by the victim.’ Thus, a victim seeking restitution (or someone on his or her behalf) initiates the process by identifying the type of loss ([Pen. Code,] § 1202.4, subd. (f)(3)) he or she has sustained and its monetary value.” (*People v. Fulton* (2003) 109 Cal.App.4th 876, 885-886.)

When a trial court’s determination is attacked on the ground that there is no substantial evidence to sustain it, the ““power of the appellate court begins and ends with the determination as to whether there is any substantial evidence, contradicted or uncontradicted,” to support the trial court’s findings.’ [Citations.]” (*People v. Baker* (2005) 126 Cal.App.4th 463, 468-469; see also, *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Here, Simrock testified that he spent about \$180 on gas to refill the tanks on his vehicles three times, \$60 to purchase a less expensive phone than the 3GiPhone he had been given by his son, about \$180 to install a “kill switch” in the Envoy and \$120 to rekey his house. This totaled \$540. The juvenile court ordered the minor to pay \$530 in restitution. This testimony clearly made a prima facie showing that Simrock expended the amounts to which he testified. The minor did not offer any evidence to dispute these amounts. The minor argues that this case is similar to *People v. Harvest* (2000) 84 Cal.App.4th 641, in which the appellate court reversed a victim restitution order of \$5500 for funeral expenses because the claimant had failed to provide adequate documentation or testimony in support of the claim. That case is not on point here, because although

Simrock did not provide documentation, he did offer extensive testimony to support each portion of his claim and how it was related to the crimes committed against him by the minor. Although, as the minor argues, Simrock did not always provide an exact amount, but rather estimated some of his costs, it seems clear from our reading of the testimony that Simrock provided a reasonable estimate based on his best recollection. In addition, it is clear from the testimony that Simrock minimized the amounts he spent because he did not know he would be reimbursed and could not afford to replace the stolen items with equivalent items. For example, at the time of the crime, Simrock told police the cell phone was worth “over \$200” but replaced with a “cheap cell phone” costing \$60 because the iPhone was costly to replace and he needed to have a cell phone right away. Simrock also told police the price to replace the remote key fobs for the Envoy and for the Jaguar would be \$500 each. However, he again opted to go with a less expensive option, in that he did not have the Jaguar re-keyed because the key itself was not missing, and only installed a kill switch in the Envoy instead of having it re-keyed because re-keying would have been “very expensive.” Neither did Simrock replace either of the stolen remote key fobs.

Based on Simrock’s testimony, which was both uncontradicted and sufficiently specific, we conclude the trial court did not abuse its discretion in awarding the \$530 in victim restitution.

Finally, we address the minor’s assertions that the restitution statutes do not support the reimbursement of Simrock’s costs for rekeying his home and installing a kill

switch in the Envoy. As stated above, Welfare and Institutions Code, section 730.6, authorizes restitution to anyone “who incurs any economic loss as a result of the minor’s conduct” (Welf. & Inst. Code, § 730.6, subd. (a)(1).) The minor argues that security measures are not reimbursable because not specifically enumerated in the restitution statutes. We find this argument to be unavailing because the statutes in no way limit the types of expenses eligible for restitution. While subdivision (h) of section 730.6 does list a number of expenses, such as lost wages and medical expenses, that can be included in a restitution order, the statute provides that restitution can “include” these types of expenses, not that it is limited to those enumerated.

Similarly, the minor argues that the language of the parallel Penal Code, section 1202.4, subdivision (f)(3)(J), limits the reimbursement of a victim’s expenses for security measures to crimes involving a violent felony. And similarly, this provision specifies a number of expenses eligible for restitution “*including, but not limited to*, all of the following [¶] [¶] (J) Expenses to install or increase residential security incurred related to a violent felony” This statute by its very terms does not limit reimbursement for security measures to victims of violent felonies, but only lists such expenses as among those eligible for reimbursement.

For these reasons, the minor has not carried his burden to establish that the juvenile court’s award of victim restitution was an abuse of discretion because not supported by the evidence or contrary to the applicable statutes.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

RICHLI
J.

CODRINGTON
J.