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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.J.,

Defendant and Appellant.

E061526

(Super.Ct.No. J239933)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brian Saunders,  
Judge. Affirmed in part, reversed and remanded in part.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry Carlton, Karl T. Terp, and  
Kimberley A. Donohue, Deputy Attorneys General, for Plaintiff and Respondent.

A juvenile court found true that defendant and appellant D.J. (minor) committed a battery on a school employee (Pen. Code, § 243.6). Minor was thereafter declared a ward of the court and placed on probation on various terms and conditions. Following a restitution hearing, minor was ordered to pay victim restitution in the amount of \$29,380. Minor's sole contention on appeal is that the juvenile court abused its discretion in imposing victim restitution in the amount of \$29,380 for noneconomic losses. We agree and remand the matter to allow the lower court to determine the economic loss the victim incurred as a result of minor's actions.

## I

### FACTUAL BACKGROUND

In October 2010, Steven Howes was a teacher at a high school in Twentynine Palms, California, and had minor as a student. Without provocation, minor pushed Howes against the panic bar on his classroom door, causing his left shoulder to be wedged against it as he attempted to stop his fall and reach the classroom phone to call for help. Howes's left shoulder required surgery and months of physical therapy. In addition, Howes lost 25 percent of his range of motion in his left shoulder. As a result of his injury, a workers' compensation judge found Howes to be 21 percent permanently disabled.

About four months prior to minor's attack on Howes, Howes had purchased a 42-foot motor home for \$93,380. Despite surgery and extensive, painful physical therapy, Howes could no longer steer the motor home's large bus-type steering wheel and he had

difficulty holding his arm up for long periods of time to travel. Howes also could not comfortably reach into the engine compartment to check the motor home's fluids and other systems for basic maintenance. Because he was no longer able use his motor home, Howes was forced to sell it. Howes eventually sold his motor home in May 2012 for \$64,000; a loss of \$29,380.

Following a restitution hearing, the juvenile court ordered minor to pay victim restitution to Howes in the amount of \$29,380 payable at \$100 per month.

## II

### DISCUSSION

Minor argues the juvenile court erred in imposing victim restitution for the loss in value of Howes's 42-foot motor home when injuries caused by minor precluded Howes from driving it and forced him to sell it. Specifically, while acknowledging Howes had suffered a loss due to his inability to use the motor home, minor claims that that loss in value of the motor home was not an "economic loss" caused by minor's actions within the meaning of Welfare and Institutions Code section 730.6.<sup>1</sup>

"In 1982, by initiative, the voters of California added a provision to the state Constitution establishing a new constitutional right: the right of every crime victim to obtain restitution from the perpetrator of the crime for losses suffered." (*People v. Crow* (1993) 6 Cal.4th 952, 956; see *Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 304

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<sup>1</sup> All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

(*Luis M.*.) This constitutional provision directed the Legislature to enact implementing legislation. (*Luis M.*, at p. 304.)

Penal Code sections 1202.4 and 730.6 are two of the implementing statutes. (*In re Tommy A.* (2005) 131 Cal.App.4th 1580, 1587; *People v. Giordano* (2007) 42 Cal.4th 644, 651-652 (*Giordano*).) Section 730.6 “governs restitution in cases where a minor is adjudicated a ward of the court pursuant to section 602.” (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1131 (*Johnny M.*); *Giordano*, at pp. 651-652 [Penal Code section 1202.4 applies in adult criminal cases and “parallels” section 730.6].)

Subdivision (a)(2) of section 730.6 provides, in relevant part, that the court, upon finding a minor to be a person described in section 602, “shall order the minor to pay, in addition to any other penalty provided or imposed under the law, . . . the following:

[¶] . . . [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (h).” Section 730.6, subdivision (h), provides, in relevant part: “The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. . . . A restitution order pursuant to [section 730.6, subdivision (a)(2)(B)] . . . 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, including [certain specific categories of economic loss, e.g., medical expenses and the value of stolen or damaged property].” (Italics added; see Pen. Code, § 1202.4; *Giordano, supra*, 42 Cal.4th at p. 656 [Penal Code section 1202.4 provides for

full restitution of victims' economic losses, but "does not authorize direct restitution for noneconomic losses. [Citation.]")

"The purpose of an order for victim restitution is threefold, to rehabilitate the [minor], deter future delinquent behavior, and make the victim whole by compensating him for his economic losses. [Citation.]" (*In re Travis J.* (2013) 222 Cal.App.4th 187, 204.) Victim restitution statutes, enacted as a result of Proposition 8,<sup>2</sup> are to be interpreted liberally and broadly to uphold the intention of the voters to give persons who have suffered losses resulting from criminal activity the right to restitution. (*Luis M., supra*, 59 Cal.4th at p. 305; *Johnny M., supra*, 100 Cal.App.4th at p. 1132.)

The victim seeking restitution has the burden of presenting "an adequate factual basis for the claim." (*Giordano, supra*, 42 Cal.4th at p. 664.) Once that prima facie showing has been made, the burden shifts to the defendant, here minor, to disprove the loss claimed by the victim. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 [Fourth Dist., Div. Two].)

We review a trial court's order of victim restitution for an abuse of discretion. (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 992; *People v. Ortiz* (1997) 53 Cal.App.4th 791, 800.) The trial court is afforded broad discretion in calculating an amount of victim restitution. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 63-64.) "The trial court "must use a rational method that could reasonably be said to make the

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<sup>2</sup> Article I, section 28 of the California Constitution, adopted as an initiative measure on June 8, 1982.

victim whole, and may not make an order which is arbitrary or capricious.” ’ [Citation.]” (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045 (*Keichler*)). No abuse of discretion will be found “ ‘ “[w]hen there is a factual and rational basis for the amount of [victim] restitution ordered by the trial court.” ’ ” (*Johnny M., supra*, 100 Cal.App.4th at p. 1132.) However, if there is no substantial evidence to support the award, and if there is no other rational explanation, the trial court has abused its discretion. (*People v. Thygesen, supra*, 69 Cal.App.4th at p. 993; *In re K.F.* (2009) 173 Cal.App.4th 655, 661 [no court has discretion to make an order not authorized by law, or to find facts for which there is not substantial evidence].)

Thus, while the amount of restitution cannot be arbitrary or capricious, “ “[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, supra*, 53 Cal.App.4th at p. 800.) Sentencing judges are given broad discretion regarding the information they can consider and the source of that information. (*People v. Foster* (1993) 14 Cal.App.4th 939, 947 [Fourth Dist., Div. Two], superseded by statute on another ground as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64, 70.) If the propriety of the order turns on the interpretation of a statute, a question of law is raised, which we review de novo. (*In re M.W.* (2008) 169 Cal.App.4th 1, 4 (*M.W.*)).

While acknowledging that Howes possibly “sustained a compensable loss for the diminution in his enjoyment” of his motor home after the incident, minor, nonetheless,

argues that Howes did not sustain any economic loss as a result of the sale of his motor home because the loss in the value of the motor home was “related to the passage of time from its purchase, not the injury.” Minor maintains that the difference between the amount Howes paid for the motor home and the amount he sold it for was not an economic loss resulting from minor’s actions; and, therefore, the victim restitution award was outside the scope of the juvenile court’s authority under section 730.6 and an abuse of discretion.<sup>3</sup>

Economic damages are “objectively verifiable monetary losses including medical expenses, loss of earnings, burial costs, *loss of use of property*, costs of repair or replacement, costs of obtaining substitute domestic services, loss of employment and loss of business or employment opportunities.” (Civ. Code, § 1431.2, subd. (b)(1), italics added.) Noneconomic damages are “subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.” (Civ. Code, § 1431.2, subd. (b)(2).)

The term “ ‘economic losses’ ” is also accorded an expansive interpretation. (*Johnny M., supra*, 100 Cal.App.4th at p. 1133.) The term is not limited to out-of-pocket losses. (*Id.* at pp. 1132-1133.) The term includes profits lost due to time the victim spent as a witness (Pen. Code, § 1202.4, subd. (f)(3)(E); *People v. Nguyen* (1994) 23

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<sup>3</sup> Minor does not challenge the loss in value of the motor home or how the juvenile court calculated that loss.

Cal.App.4th 32, 44), payment of interest as compensation for the loss of use of embezzled funds (*People v. Whisenand* (1995) 37 Cal.App.4th 1383, 1390-1391 [Fourth Dist., Div. Two]), increased value of embezzled mutual fund shares (*People v. Tucker* (1995) 37 Cal.App.4th 1, 5), the cost of a Hmong healing ceremony (*Keichler, supra*, 129 Cal.App.4th at p. 1046), as well as the reasonable value of employee work product lost as a result of the criminal conduct of another (*Johnny M., supra*, 100 Cal.App.4th at p. 1134.)

In *M.W., supra*, 169 Cal.App.4th 1, the court interpreted section 730.6, subdivision (h), to be a nonexclusive list. “The term ‘economic loss’ in the juvenile restitution statute must be given an expansive interpretation because any interpretation that limits a victim’s rights to restitution would derogate the expressed intent and purposes of [California Constitution] [a]rticle I, section 28, and the provisions of the implementing statutes.” (*M.W., supra*, at p. 5.) On that rationale, *M.W.* upheld an award of mental health services to the victim because “[i]t should surprise no one that victims of crimes often need the services of a mental health professional in order to resume normal life activities.” (*Id.* at p. 6.)

Similarly, the court in *Keichler* construed the word “loss” broadly to uphold the legislative intent that every victim who suffers a loss shall have the right to restitution from those convicted of the crime giving rise to that loss, and concluded that because Penal Code section 1202.4 used the language “including, but not limited to” in describing those enumerated losses, the trial court can compensate the victim for any *economic* loss

that is proved to be the direct result of the defendant's criminal conduct, even if not specifically enumerated in the statute. (*Keichler, supra*, 129 Cal.App.4th at p. 1046.)

The only limitation the Legislature placed on victim restitution is that the loss must be an "economic loss" incurred as a result of the defendant's criminal conduct. (*People v. Moore* (2009) 177 Cal.App.4th 1229, 1232.)

In *Giordano*, our Supreme Court addressed the issue of whether the deceased victim's spouse could recover restitution from the defendant for loss of her dead husband's future earnings. (*Giordano, supra*, 42 Cal.4th at p. 657.) The court first noted "[m]any, if not all, of the categories of loss compensable as direct restitution include losses that are incurred after the occurrence of the crime, and which may continue to be incurred for a substantial period of time following a restitution hearing." (*Id.* at pp. 657-658.) Second, in rejecting the defendant's contention that the victim's spouse "did not personally suffer an economic loss," the court concluded that, as in civil wrongful death actions governed by Code of Civil Procedure section 377.60, the restitution statutes allow a victim to " 'recover compensation for the *economic loss* . . . they suffer as a result of the death,' " including financial support which the victim "would have received from the deceased except for the death." (*Giordano, supra*, at pp. 658-659.) Third, the court rejected the "defendant's argument that the doctrine of *eiusdem generis* limits the categories of loss that may be compensable by a direct restitution order." (*Id.* at p. 660.) Accordingly, the court concluded "a surviving spouse may receive as direct restitution

the amount of lost economic support incurred due to a criminal act that resulted in the death of his or her spouse.” (*Id.* at p. 662.)

Consistent with these mandates, the juvenile court properly ordered minor to pay victim restitution for Howes’s loss of use of his motor home. (See Civ. Code, § 1431.2, subd. (b)(1).) The loss of use of the motor home was an *economic loss* suffered by Howes as a result of minor’s actions. Howes had attempted to recover from the injuries he sustained after minor attacked him and use his motor home. However, despite surgery and extensive rehabilitation therapy to improve his left shoulder, Howes was unable to use his motor home and was forced to sell it. Howes’s inability to use his motor home rendered the motor home useless and a total loss to him. Howes’s loss of use in the motor home was a result of minor’s actions. The passage of time between when Howes sustained his injuries and when he eventually sold it was attributable to the surgeries and rehabilitation therapy he underwent in an attempt to recover from his injuries.

Indeed, Howes would not have sold the motor home but for the injuries caused by minor two years earlier. The fact Howes had spent two years attempting to recover from his injuries caused by minor does not diminish the economic loss Howes suffered.

Section 730.6 mandates restitution for “all determined economic losses incurred *as the result of*” the minor’s conduct unless there exists “compelling and extraordinary reasons” for not ordering restitution. (§ 730.6, subd. (h), italics added.) Howes declared that he was forced to sell his motor home because he could no longer steer the motor home’s large bus-type steering wheel and he had difficulty holding his arm up for long

periods of time to travel. Howes also stated that he could not comfortably reach into the engine compartment of the motor home to conduct basic maintenance. The juvenile court could reasonably credit Howes's statements. Thus, in statutory terms, Howes was forced to sell the motor home. This in turn caused him the loss in value of the motor home and the loss in his enjoyment of the motor home, and was the "result" of minor's conduct. (§ 730.6, subd. (h).) Moreover, minor does not suggest, and we cannot discern, any "compelling and extraordinary reasons" for not ordering restitution based on the losses caused by minor's conduct. (*Ibid.*) Therefore, the juvenile court's order of restitution for the victim's loss of use of the motor home was well within its statutory discretion.

However, the juvenile court incorrectly calculated victim restitution for the loss of use of the victim's motor home. As minor's counsel noted during oral argument, the method of calculation here was unreasonable. The court incorrectly calculated the victim's loss of use of his motor home from the date the motor home was purchased to the date the motor home was sold, rather than from the date the victim sustained his injuries as a result of minor's conduct to the date the motor home was sold.

Because the juvenile court in this case did not apply the correct method in determining the amount of the victim's loss of use of his motor home, we conclude the court abused its discretion and reverse the restitution order for further proceedings regarding the amount of victim restitution to be awarded to Howes toward restitution of his economic losses. In making that determination, the juvenile court shall apply the

method described above, unless the People on remand show the Legislature intended another method to be used in determining the loss of use of the victim's property.

III

DISPOSITION

The victim restitution order is reversed to the extent it awarded the victim noneconomic losses for the loss of use of the motor home. In all other respects, the judgment order is affirmed. The matter is remanded to the juvenile court for further proceedings consistent with this opinion.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

CODRINGTON

J.