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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

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

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL M.,

Defendant and Appellant.

F064739

(Super. Ct. No. 08JQ0070A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. George L. Orndoff, Judge.

Linda K. Harvie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Charles A. French and Jesse Witt, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Poochigian, J.

The court found that appellant, Michael M., was a person described in Welfare and Institutions Code section 602¹ after appellant admitted allegations in an amended subsequent petition charging him with unlawfully causing a fire that causes great bodily injury (count 2/Pen. Code, § 452, subd. (a)), arson of property (count 3/Pen. Code, §451, subd. (d)), and vehicle theft (count 4/Veh. Code, § 10851, subd. (a)).

On February 28, 2012, following a contested restitution hearing, the court ordered appellant to pay the amount of \$10,030.52 in restitution. On appeal, appellant raises several challenges to the court's restitution order. We conclude that the victim's impact statement and the testimony at the restitution hearing support a slightly smaller amount of restitution and modify the judgment accordingly. In all other respects, we affirm the judgment as modified.

FACTS

In the early morning hours of September 4, 2011, Sharon Young's daughter attended a house party during which two of her daughter's friends, appellant and T.P., stole the keys to Young's 1997 Chevrolet 1500 truck from her daughter. Appellant and T.P. drove the truck, which was the personal vehicle of Young's daughter, until they crashed it in an orchard and abandoned it. Later that morning, appellant, S.R., B.R., and Kyle Daviega returned to the location, poured gasoline on the truck, and set it on fire. In the process, S.R. received second degree burns to his face, neck, ears, left hand and arm, and an arm pit.

On November 16, 2011, Young submitted a victim impact statement that had attached to it a form where Young listed the following losses she incurred as a result of appellant's offenses, which totaled \$10,030.52: 1) \$1,000 for the insurance deductible on

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

the truck that she was not reimbursed for; 2) \$6,731.52 for tires, rims, and a lift that were added to the truck;² 3) a total of \$254 for some jeans, a radio, a wallet, and cash that were in the truck when it was burned; 4) \$45 for medical copayments; and 5) \$2,000 for lost wages.

According to the information Young provided the probation department in support of her claimed losses, the arson of the truck resulted in S.E, one of S.R.'s friends, harassing and threatening her daughter and in her daughter getting in a fight with S.E. at school for which the daughter was suspended five days. Additionally, S.R. sent a picture of the burnt truck to Young's daughter on the daughter's phone. These circumstances, along with S.R.'s return to school and to one of her daughter's classes after the arson, caused Young's daughter to experience stress that resulted in loss of sleep, loss of appetite, and pain in her stomach. The arson of the truck and the threats her daughter received also resulted in Young taking a 30-day "stress leave" although Young did not indicate whether her leave was necessary to take care of her daughter, to deal with her own stress, or both.³

In support of her claim for restitution, Young provided the probation department with records relating to her daughter's medical treatment and a note from Young's doctor dated September 19, 2011, which stated that Young had been under his care and would not be able to return until October 20, 2011, "due to illness[.]" Young also provided several other documents including: 1) a work attendance record for October 2011, that

² Young included the \$1,000 insurance deductible twice, once as part of the \$6,731.52 Young claimed for the loss of the lift, tires and rims and as a separate item of loss.

³ The court could reasonably have found that Young personally experienced stress from dealing with the harassment of and threats to her daughter, as well as from dealing with the stress her daughter experienced.

showed she did not work from October 1, 2011, through October 19, 2011; 2) a statement of earnings and deductions for September 2011; 3) a letter from her insurance company that showed Young was reimbursed a net amount of \$4,927.03 for the loss of the truck, i.e., the “market value” of the truck as calculated by the insurance company, less a \$1,000 deductible; and 4) a receipt for \$5,031.52 for the cost of a lift that was added to the truck in September 2010.

On December 5, 2011, the court aggregated time from previous petitions, set appellant’s maximum term of physical confinement at seven years, and committed him to the Academy Alpha Program for up to a year. The court also ordered appellant to pay restitution in the amount of \$10,030.52 to Young, as per the claim she filed.

On January 5, 2012, defense counsel filed a request for a restitution hearing challenging the amount the court awarded Young for the truck.

On February 28, 2012, at a restitution hearing in which one of appellant’s coparticipants also participated, Young testified that her 1997 truck was originally purchased for \$8,000. Young received a check for \$4,927.03 for the truck from her insurance company, which was based on their estimated value of \$5,927.03.⁴ The lift, however, was not listed in the insurance claim or in the settlement letter from the insurance company. Young further testified that in September 2010, she had the lift installed on the truck and that this required her to install wider rims and tires and a steering cobbler at a cost of \$672.33 for the tires, \$400 for the rims, and \$179.65 for the cobbler. The truck, however, had been driven less than 100 miles after the lift was installed because it was not driven much until Young’s daughter got her license on July 19, 2011, and her daughter used it only to go to and from school.

⁴ This value included \$398.03 in sales tax, a \$15 DMV title transfer fee, and a \$24 vehicle license fee refund. The insurance company valued the truck alone at \$5,490.

Young also testified that her truck contained approximately \$65 in gasoline when it was burned and that the fire destroyed the following property that was inside the truck: 1) two pairs of her daughter's jeans that cost Young \$222.99; 2) a wallet valued at \$10 that contained about \$100 in cash that her daughter received for her birthday; 3) her daughter's driver's license that cost \$25 to replace; 4) four school books collectively valued at \$100 that Young had to pay the school; and 5) a radio that cost \$85.

During the hearing, defense counsel asked the court to take judicial notice of the Kelley Blue Book trade-in value and supporting information that defense counsel obtained on December 13, 2011, from the Kelley Blue Book website for a truck that was allegedly similar to Young's truck. The court, however, sustained the prosecutor's hearsay and foundation objections and denied the request for judicial notice. In so doing, the court noted that the value would, at best, be only an approximation of the value of Young's truck on the date it was burned.

At the conclusion of the hearing, the court ordered appellant, jointly and severally with his coparticipants, to pay Young restitution in the amount of \$10,030.52.

DISCUSSION

Introduction

“‘[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.’ [Citation.] Restitution must “‘be set in an amount which will fully reimburse the victim for his or her losses unless there are clear and compelling reasons not to do so’” [Citations.] “‘While it is not required to make an order in keeping with the exact amount of loss, the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’” [Citation.]

“‘A victim's restitution right is to be broadly and liberally construed.’ [Citation.] “‘[S]entencing judges are given virtually unlimited

discretion as to the kind of information they can consider”” in determining victim restitution. [Citations.] Restitution orders are reviewed for abuse of discretion. [Citation.] When there is a factual and rational basis for the amount of restitution ordered, no abuse of discretion will be found. [Citation.]” (*People v. Phu* (2009) 179 Cal.App.4th 280, 283-284.)

In Setting the Amount of Restitution the Court Relied on More than Young’s Statements that were Contained in the Probation Report

Appellant contends that the People should not be able to carry their burden of proof as to the amount of restitution appellant owed merely by submitting a probation report that included a recommended amount of restitution based entirely on the victim’s stated losses. According to appellant, this violated appellant’s right to due process and to a fundamentally fair proceeding by lessening the People’s burden of proof. We will reject these contentions.

“[T]he 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.] “Due process does not require a judge to draw sentencing information through the narrow net of courtroom evidence rules ...[. S]entencing judges are given virtually unlimited discretion as to the kind of information they can consider and the source from whence it comes.” [Citation.]’ [Citation.]

“This is so because a hearing to establish the amount of restitution does not require the formalities of other phases of a criminal prosecution. [Citation.] When the probation report includes information on the amount of the victim’s loss and a recommendation as to the amount of restitution, the defendant must come forward with contrary information to challenge that amount. ‘[A] defendant’s due process rights are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount; the rigorous procedural safeguards required during the guilt phase ... are not required.’ [Citation.]” (*People v. Foster* (1993) 14 Cal.App.4th 939, 946-947 (*Foster*).)

In accord with *Foster*, the trial court could have found that the victim’s statements contained in her impact statement alone provided prima facie evidence of the losses she suffered as a result of appellant’s unlawful conduct. Here, however, the victim provided

the probation department with documentation that supported her claim for a total of \$10,030.52 in restitution. Further, appellant challenged only the amount of restitution the victim claimed for her truck that was destroyed in the arson fire and requested a hearing on this amount. Nevertheless, at the restitution hearing, the victim testified regarding the basis for the restitution she was seeking for the truck, the lift, costs associated with installing the lift, and several items that were burned in the truck. Accordingly, we reject appellant's contention that the court relied only on Young's statements in the probation report in setting the amount of restitution or that he was denied his right to due process or to a fair proceeding by the manner in which the court determined the amount of restitution he was required to pay.

Young's Claim for Lost Wages

Appellant raises several challenges to the court's order requiring him to pay \$2,000 in restitution to Young for lost wages. He acknowledges that the right to challenge an award of restitution can be forfeited by a failure to object and that he did not object in the juvenile court to its award of \$2,000 in restitution to Young for lost wages. However, he claims that he did not forfeit his right to challenge this award to Young because the award was an unauthorized sentence. Alternatively, he contends that he was denied the effective assistance of counsel by his defense counsel's failure to preserve the issue by objecting to this award. We will find that appellant forfeited his right to challenge the \$2,000 in restitution for lost wages to Young, that he was not denied the effective assistance of counsel, and that, in any event there is no merit to any of his challenges to this part of the court's restitution order.

i. Appellant Forfeited his Right to Challenge the Award of Restitution for Young's Lost Wages

“Claims of error relating to sentences “which, though otherwise permitted by law, were imposed *in a procedurally or factually flawed manner*” are waived on appeal if not first raised in the trial court.

[Citation.] For example, the waiver doctrine precludes appellate review in cases where a defendant fails to object to the reasonableness of a probation condition. [Citation.] The California Supreme Court has explained: “A timely objection allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. The parties must, of course, be given a reasonable opportunity to present any relevant argument and evidence. A rule foreclosing appellate review of claims not timely raised in this manner helps discourage the imposition of invalid probation conditions and reduce the number of costly appeals brought on that basis.” [Citation.]

“An objection to the amount of restitution may be forfeited if not raised in the trial court. ‘The unauthorized sentence exception is “a narrow exception” to the waiver doctrine that normally applies where the sentence “could not lawfully be imposed under any circumstance in the particular case,” for example, “where the court violates mandatory provisions governing the length of confinement.” [Citations.] The class of nonwaivable claims includes “obvious legal errors at sentencing that are correctable without referring to factual findings in the record or remanding for further findings.” [Citation.] The appropriate amount of restitution is precisely the sort of factual determination that can and should be brought to the trial court’s attention if the defendant believes the award is excessive.” (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218.)

Appellant did not object at his disposition hearing to the award of \$2,000 in restitution for lost wages to Young. Further, although he requested a hearing on the amount of restitution awarded Young for the loss of her truck and the lift, he did not request a hearing on the amount of restitution for lost wages the court awarded her. Thus, appellant forfeited his right to challenge the portion of the court’s restitution order requiring appellant to reimburse Young \$2,000 for lost wages.

Appellant contends he did not forfeit his right to challenge this portion of the court’s restitution order inasmuch as it constituted an unauthorized sentence because:

- 1) Young was not a victim of his unlawful conduct within the meaning of section 730.6;
- and 2) the stress Young’s daughter experienced that led to Young taking time off from work was due to intervening causes and not to appellant’s unlawful conduct. We will reject these contentions.

ii. Young was a Victim of Appellant's Unlawful Conduct

Appellant contends that Young was not a victim of his unlawful conduct within the meaning of section 730.6 because the evidence failed to establish that she owned the truck that appellant and his cohorts stole and burned. Therefore, according to appellant, Young was entitled to restitution for her lost wages pursuant to section 730.6, subdivision (h)(3) only if she took time off from work to care for her injured daughter. Appellant further contends that since the record is unclear whether Young took time off from work to deal with her own stress or to take care of her daughter because of the stress she experienced, the award of \$2,000 in lost wages to Young was an unauthorized sentence which he may challenge on appeal.⁵ We disagree.

Section 730.6, in pertinent part, provides:

“(a)(1) It is the intent of the Legislature 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.*

“(2) Upon a minor being found to be a person described in Section 602, ... the court shall order the minor to pay ... the following: [¶] ... [¶]

“(B) Restitution to the victim or victims, if any, in accordance with subdivision (h). [¶] ... [¶]

“(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined.... 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 subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, ... 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*

⁵ According to appellant, Young is entitled to restitution for lost wages only for the three days that the record shows she took off from work to take her daughter to medical appointments.

for which the minor was found to be a person described in Section 602, including all of the following:

“(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

“(2) Medical expenses.

“(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor’s parent, parents, guardian, or guardians, while caring for the injured minor.” (§ 730.6, subd. (h), italics added.)

The letter from Young’s insurance company, which appellant did not object to the court considering, stated that the truck was owned by Young and her husband and appellant did not contend otherwise in the juvenile court. Further, Young testified at the restitution hearing that she and her husband bought the truck and the lift. Thus, the record contains ample evidence that Young (and her husband) owned the truck and the lift that was burned during the commission of appellant’s arson offense.

Moreover, appellant’s theft and arson offenses resulted in the total loss of a truck that belonged to Young and her husband and that her daughter used as her personal vehicle, of the lift that Young and her husband added to the truck, and of personal property belonging to Young’s daughter that was destroyed in the arson of the truck. Thus, Young and her daughter were both victims of appellant’s unlawful conduct within the meaning of section 730.6, subdivision (a)(1) and both were entitled to compensation for their economic losses. Further, as discussed below, the court could reasonably find from Young’s statements and the documentation she provided the probation department that appellant’s offenses caused Young and her daughter to both suffer stress that ultimately required Young to take 30 days off from work to care for her daughter and/or to deal with her own stress. In either case, whether Young took time off to take care of her daughter or because of the stress she personally experienced, Young was entitled to

restitution for the wages she lost during her 30-day medical leave. Accordingly, we reject appellant's contention that the award of restitution for lost wages for this period of time was an unauthorized sentence because Young was not a victim of his offenses within the meaning of section 730.6.

iii. Appellant's Offenses were the Proximate Cause of Young's Lost Wages

Appellant contends that Young missed 30 days of work because of stress her daughter experienced. He further contends that this stress was caused not by his unlawful conduct but by the following intervening causes: 1) S.R. sending Young's daughter a picture of the truck after it was burned; 2) S.E. threatening Young's daughter; 3) S.E. and Young's daughter getting into a fight at school; 4) Young's daughter being suspended from school because of the fight; and 5) S.R.'s return to school and to a class that S.R. and Young's daughter both attended. Thus, according to appellant, the award of restitution for Young's lost wages was an unauthorized sentence for the additional reason that they resulted from the foregoing intervening causes and not from his unlawful conduct. We disagree.

“[Penal Code] section 1204.4, subdivision (f)(3) provides that ‘[t]o the extent possible, the restitution order ... shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred *as the result of the defendant's criminal conduct* ...’ (Italics added.) Interpreting the requirement that the damages result from the defendant's criminal conduct, the court in *People v. Jones* (2010) 187 Cal.App.4th 418, 424-427 ... held that tort principles of causation apply to victim restitution claims in criminal cases. The court observed that there ‘are two aspects of causation ...: cause in fact (also called direct or actual causation), and proximate cause.’ [Citation.] The court explained that “[a]n act is a cause in fact if it is a necessary antecedent of an event” and that “proximate cause ‘is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.’” [Citation.] [¶] ... [¶]

““The first element of legal cause is *cause in fact* The ‘but for’ rule has traditionally been applied to determine cause in fact.... [¶] The

Restatement formula uses the term *substantial factor* ‘to denote the fact that the defendant’s conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause.’” [Citation.] [¶] ... California courts have adopted the ‘substantial factor’ test in analyzing proximate cause. [Citation.] “‘The substantial factor standard is a relatively broad one, *requiring only that the contribution of the individual cause be more than negligible or theoretical.*” [Citation.] Thus, “a force which plays only an ‘infinitesimal’ or ‘theoretical’ part in bringing about injury, damage or loss is not a substantial factor” [citation], but a very minor force that does cause harm is a substantial factor [citation]...’ [Citation.]” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320-1322.)

Here, Young’s mother provided the probation department with medical records that showed her daughter suffered debilitating stress after the theft and arson of her personal vehicle by appellant and his companions. Further, in addition to the circumstances cited by appellant, Young’s daughter also experienced stress from the loss of her personal vehicle and the loss of trust in her friends and people in general. Young also experienced stress from the harassment of and threats to her daughter, as well as from having to deal with her daughter’s stress. Appellant’s offenses were a cause in fact of the stress Young and her daughter experienced because none of the circumstances that caused their stress, including those cited by appellant, would have occurred if appellant and his coparticipants had not stolen and burned Young’s truck. Appellant’s offenses were also a cause in fact of Young’s lost wages because ultimately Young had to take time off from work to deal with her daughter’s stress, as well as the stress she experienced. Thus, in view of the legislative intent that victims be compensated for “any economic loss” resulting from a minor’s unlawful conduct (§ 730.6, subd. (a)(1)) and the strong, causal link between them, we conclude that appellant’s unlawful conduct was a proximate cause of Young’s lost wages.

Appellant appears to contend that his offenses were not the proximate cause of the stress Young’s daughter experienced because he was not personally involved in any of the incidents that he cites as causes of that stress. However, it is clear from the authority

cited above that personal involvement is not a prerequisite for determining proximate cause. Further, since appellant's offenses were a proximate cause of the stress Young and her daughter each experienced, the circumstances cited by appellant did not convert the award of restitution to Young for lost wages into an unauthorized sentence. Thus, we conclude that appellant forfeited his right to challenge the award to Young of \$2,000 in restitution for lost wages.

iv. Appellant was not Denied the Effective Assistance of Counsel

“To establish entitlement to relief for ineffective assistance of counsel the burden is on the defendant to show (1) trial counsel failed to act in the manner to be expected of reasonably competent attorneys acting as diligent advocates and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings. [Citations.]” (*People v. Lewis* (1990) 50 Cal.3d 262, 288.)

As discussed above, appellant's offenses were clearly a proximate cause of the stress Young and her daughter each experienced, which resulted in Young's lost wages from having to take time off from work to care for her daughter and/or her own stress. Further, as the co-owner of the truck that appellant and his coparticipants stole and burned, Young was indisputably a direct victim of appellant's unlawful conduct within the meaning of section 730.6. Thus, any objection by defense counsel to the award of restitution for lost wages to Young on the ground that the stress was caused by the intervening causes previously discussed or on the ground that Young was not a victim of appellant's offenses should have been overruled. Further, since defense counsel is not required to make futile objections (*People v. Zavala* (2008) 165 Cal.App.4th 772, 780), defense counsel did not deprive appellant of effective representation by his failure to object to restitution to Young for her lost wages on either of these grounds; nor could have appellant been prejudiced by counsel's failure to object. Thus, we conclude that appellant was not denied the effective assistance of counsel.

Nevertheless, even if issues relating to restitution to Young for lost wages were properly before us, we would also reject appellant's remaining contentions relating to this portion of the court's restitution order.

v. Judicial Estoppel does not Prevent the People from Asserting on Appeal that Young was a Victim of Appellant's Offenses

The petition, the amended petition, and the probation report refer only to Young's daughter as the victim of his offenses. Appellant cites these documents to contend that the People have taken inconsistent positions in this matter because in the juvenile court the People took the position that Young's daughter was the victim, and on appeal, the People claim for the first time that Young is also a victim. Therefore, according to appellant, the People should be barred by the doctrine of judicial estoppel from claiming that Young is a victim. Appellant is wrong.

“The doctrine of judicial estoppel, sometimes called the doctrine of “preclusion of inconsistent positions” [citation], “precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position. [Citations.] The doctrine's dual goals are to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies. [Citation.] Application of the doctrine is discretionary.” [Citation.] The doctrine applies when “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” [Citations.] [¶] Judicial estoppel is an equitable doctrine to protect against fraud on the courts. [Citation.] It has been said that “[b]ecause of its harsh consequences, the doctrine should be applied with caution and limited to egregious circumstances.” [Citations.]” (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47-48.)

In the juvenile court, Young submitted a letter from her insurance company that stated she was the insured and that she and her husband were the owners of the truck that appellant and his coparticipants stole and burned. Young also testified at the restitution

hearing that she and her husband bought the truck and the lift. Additionally, in arguing at the hearing that appellant should be liable for restitution for the loss of the truck and lift, the prosecutor specifically referred to Young as the victim at least two times.⁶ Thus, even though Young's daughter was named as a victim in the underlying petitions and in the probation report, the record discloses that the People took the position in the juvenile court that Young also was a victim of appellant's unlawful conduct. Further, since the People have not taken inconsistent positions in this matter with respect to whether Young was a victim, the doctrine of judicial estoppel does not bar the People from asserting on appeal that Young is also a victim of appellant's unlawful conduct.

vi. Appellant's Remaining Contentions with Respect to the Restitution for Lost Wages Ordered by the Court

The doctor's note submitted by Young to the probation department in support of her claim for restitution was dated September 19, 2011, and stated that Young would be able to return to work on October 20, 2011, "due to illness[.]" Additionally, in her impact statement Young stated that appellant's offense had caused her daughter stress resulting in loss of sleep, loss of appetite, and stomach pains and that Young took a 30-day stress leave from work "due to this crime" and the threats her daughter had received. Appellant cites this evidence to contend that: 1) it is unclear from the evidence whether Young took the medical leave because of the stress she personally experienced or to take

⁶ Only Young testified at the hearing. In his closing argument, the prosecutor, in pertinent part, argued as follows with respect to whether the insurance settlement included the value of the lift in its valuation of Young's truck: "[Counsel for appellant and counsel for a coparticipant] have argued facts that are simply not in evidence. They've gone on for a long time talking about what the insurance company took into account to come up to that number[,] [i.e., the value of the truck]. If you actually look at the document, it says for the vehicle. It does not include after market value *added by the victim* [referring to Young]. What we do have is *the testimony of the victim* [again referring to Young] that that's what she added after market to the vehicle and then the insurance company is not taking that into consideration." (Italics added.)

care of her daughter because of the stress she experienced; and 2) since Young was not a victim of appellant's unlawful conduct, she was not entitled to restitution for lost wages if she took medical leave to deal with her personal stress. However, as discussed earlier, Young was also a victim of appellant's unlawful conduct and this conduct was a proximate cause of the stress Young experienced. Therefore, Young was entitled to restitution for the wages she lost during her medical leave irrespective of whether she took the medical leave to deal with stress she personally experienced or to take care of her daughter because of the stress her daughter experienced.

Appellant's final contention with respect to restitution for Young's lost wages is that the statement of earnings and deductions Young provided to the probation department was insufficient to justify restitution of \$2,000. According to appellant, this statement is of little, if any, evidentiary value because it does not show Young's hourly wage, how many hours she worked during the pay period for which it was issued, or the number of days the pay period covered. Consequently, according to appellant, the evidence was insufficient to establish that Young was entitled to \$2,000 in restitution for lost wages. We disagree.

As noted earlier, "When there is a factual and rational basis for the amount of restitution ordered, no abuse of discretion will be found. [Citation.]" (*People v. Phu, supra*, 179 Cal.App.4th at p. 284.) Young's statement of earnings shows she earned \$1,717.38 for 87 hours of work. This translates into an hourly rate of \$19.74 per hour ($\$1,717.38/87 = \19.74). Assuming Young worked 8 hours a day, during the 23 work days she missed from September 19, 2011, through October 19, 2011, she would have lost 184 hours of work for a total of \$3,632.16 in lost wages. Young's statement of earnings indicates that she was an intermittent worker, so she probably would have worked less hours and earned less than \$3,632.16 in the 23 days of work she lost. However, the statement also indicates that Young's year-to-date earnings were

\$29,338.31. Assuming these earnings were for 10 months, these figures show that Young was earning an average of \$2,933.83 a month. Thus, Young's statement of earnings and deductions supports her claim for \$2,000 in lost wages because the court could reasonably have found from this statement that Young lost at least that much in wages as a result of taking a medical leave and probably a substantial amount more.⁷

***The Award of Restitution for Young's Truck Lift, Tires,
Rims, and Steering Cobbler***

Appellant raises the following issues with respect to the court's award of \$6,731.52 in restitution for the replacement cost of the lift, tires, rims, and steering cobbler: 1) there was insufficient evidence to support this amount; 2) the court abused its discretion by its failure to take judicial notice of certain evidence proffered by appellant; 3) the award of restitution for the lift does not serve the statutory goal of rehabilitation because it is excessive; and 4) the restitution amount must be reduced by \$1,000 because Young included the unreimbursed \$1,000 insurance deductible twice in her calculations. We will reject appellant's first three contentions and find that his last contention is moot.

i. The Sufficiency of the Evidence to Support the Court's Restitution Order for the Lift, Tires, Rims, and Steering Cobbler

Appellant appears to contend that the insurance company's valuation of Young's truck and the insurance settlement included the lift, tires, rims, and steering cobbler. Therefore, according to appellant, the evidence was insufficient to support the juvenile court's order for an additional \$6,731.52 in restitution for these items.

"Section 730.6, subdivision (h) directs the court to order restitution '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 it finds compelling and

⁷ This may explain why defense counsel did not challenge the juvenile court's award of \$2,000 in restitution to Young for lost wages.

extraordinary reasons for not doing so. ‘[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.’ [Citation.] The court may order full or partial payment for the value of stolen or damaged property and has the discretion to assess the value of stolen or damaged property at ‘the replacement cost of like property, or the actual cost of repairing the property when repair is possible.’ [Citation.]” (*In re Alexander A.* (2011) 192 Cal.App.4th 847, 853-854.) A victim’s testimony of the original cost of a stolen or damaged item is competent evidence of the replacement value and is sufficient to support a restitution award. (*Foster, supra*, 14 Cal.App.4th at p. 948.) “‘Once 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.]” (*People v. Tabb* (2009) 170 Cal.App.4th 1142, 1154.)

Here, Young’s testimony and the documentation she provided in support of her claim showed that a year prior to the arson, Young paid \$5,031.52 for the lift, including the cost of installation. She also testified that installation of the lift required her to install wider tires and rims and a steering cobbler at a cost of \$672.33, \$400, and \$179.65, respectively. Thus, the record supports an award of \$6,283.50 for the replacement value of the lift and these other items.

The letter from the insurance company did not state whether its valuation of Young’s truck included the lift and tires, rims, and steering cobbler it required. Further, at the restitution hearing when Young was asked for the value of the truck on the date it was burned, the following colloquy occurred:

“[Young]: The insurance valued it at \$5,927.03, and *that was about the Blue Book value that we put in also.*

“[Prosecutor]: Okay. What Else?”

“[Young]: I also had a receipt that was to put a lift on the truck.

“[Prosecutor]: What was the amount for that?

“[Young]: It was \$5,031.52.” (Italics added.)

Young then testified regarding the cost of putting wider rims and tires and a steering cobbler on the truck that were necessitated by the addition of the lift.

The court could reasonably have found from the above testimony that after including the particular characteristics of her truck, such as mileage, year, options, etc., Young came up with a Kelley Blue Book value for her truck that was close to the value that the insurance company calculated for her truck. Further, it is clear from her testimony that the value Young calculated for her truck did not include the replacement cost of the lift and the required additions. Therefore, since Young’s valuation of her truck without the lift was similar to the insurance company’s valuation, Young’s valuation supports the court’s implicit conclusion that the insurance company’s valuation did not include the replacement cost of the lift and the required additions.

During the restitution hearing, defense counsel asked the court to take judicial notice that on December 13, 2011, the Kelley Blue Book trade-in value for a 1997 Chevrolet 1500 *regular cab*, short bed truck with 24,000 miles, in excellent condition was \$3,028. The court, however, sustained the prosecutor’s hearsay and foundation objections and did not take judicial notice of this information. Nevertheless, appellant contends that the difference between the insurance company’s valuation of \$5,490 for Young’s truck and the proffered Kelley Blue Book value indicates that the insurance company included the value of the lift in its valuation. We disagree.

The record established that the truck for which defense counsel obtained the above noted Kelley Blue Book value was similar, but not comparable, to Young’s truck because Young’s truck had *an extended cab* and defense counsel did not show that both trucks had similar mileage and options. Therefore, the disparity between the insurance

company's valuation of Young's truck and the proffered Kelley Blue Book value does not indicate that the insurance company's valuation of Young's truck included the lift and the additions it required.

ii. The Court's Refusal to take Judicial Notice of the Proffered Kelley Blue Book Value

Appellant contends the court denied him his right to due process by its failure to take judicial notice of the Kelley Blue Book trade-in value discussed in the previous section. Appellant is wrong.

Evidence Code section 452 allows the court to take judicial notice of a variety of matters. However, "[a]lthough a court may judicially notice a variety of matters [citation], only *relevant* material may be noticed. 'But judicial notice, since it is a substitute for proof [citation], is always confined to those matters which are relevant to the issue at hand.' [Citation.]" (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)

The Kelley Blue Book value that defense counsel sought to have the court take judicial notice of was not relevant in determining the value of Young's truck because, as noted above, it was for a truck that was not comparable to Young's truck. Thus, we conclude that the court did not err when it denied defense counsel's request for judicial notice of the proffered Kelley Blue Book value.

The Court did not Order Excessive Restitution

Appellant contends that the court awarded Young excessive restitution for her lost wages and for the cost of replacing her truck and lift. He further contends that because ordering excessive restitution does not further the legislative goals of rehabilitation and deterrence, the court abused its discretion when it ordered appellant to pay restitution in these excessive amounts. Since we have already concluded that the restitution the court ordered appellant to pay Young for her lost wages and for the replacement cost of her

truck and lift was not excessive, it follows that the court did not abuse its discretion as appellant contends.

Appellant's Restitution Obligation

Appellant did not challenge Young's claim for restitution in the trial court for \$2,000 for lost wages and \$45 for medical copayments. Further, the evidence at the disposition hearing established that Young was entitled to restitution of \$1,000 for the insurance deductible that was not reimbursed to Young by her insurance company,⁸ \$6,283.50 for the replacement value of the lift and required additions, \$222.99 for two pairs of jeans, \$10 for a wallet, \$100 in cash, \$25 for a driver's license, \$100 for four books, \$85 for a radio, and \$65 for gasoline. Thus, we conclude that Young is entitled to a total of \$9,936.49 in restitution.⁹

DISPOSITION

The judgment is modified to decrease the restitution awarded to Young from \$10,030.52 to \$9,955.16, as calculated above. The juvenile court is directed to issue a new disposition order consistent with this opinion and to modify its paperwork accordingly. As modified, the judgment is affirmed.

⁸ Since we are including the \$1,000 insurance deductible only once in our calculation of the appropriate amount of restitution due Young, appellant's contention that the award of restitution should be reduced \$1,000 because Young included this amount twice in her calculations is moot.

⁹ $\$2,000 + \$45 + \$1,000 + \$6,283.50 + \$222.99 + \$10 + \$100 + \$25 + \$100 + \$85 + \$65 = \$9,936.49$.