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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

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

H036898
(Santa Clara County
Super. Ct. No. JV37018)

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN T.,

Defendant and Appellant.

Kevin T., a minor, appeals from a restitution order. He contends that the juvenile court abused its discretion in ordering restitution, because there was no evidence that he caused the economic loss to the victims, and thus the restitution order served no rehabilitative purpose. We affirm the order.

I. Factual and Procedural Background

Sometime between July 30, 2010 and August 2, 2010, Maria L.'s apartment was burglarized while she was in Mexico. Her then 12-year-old son, Robert L., her daughter, and her mother-in-law were also away that weekend. When Robert returned to the

apartment, he discovered that an Apple iPod touch, a Nintendo Wii gaming console and portable hard drive, a jacket, a DVD player, a gold bracelet, and a pair of Nike Jordan shoes had been taken. The L. family lived in the same apartment complex as the minor.

When the police conducted their investigation on the afternoon of August 2, 2010, they learned that the minor had been seen in the area of the burglary with a backpack. Robert also told them that the minor was the only person that he had told that the whole family was going to be on vacation. A records check revealed that the minor was on probation and subject to a search condition.¹ The police conducted a probation search of the minor's bedroom, found the Nintendo Wii gaming console and the portable hard drive in his backpack, and transported the minor to juvenile hall.

The probation officer interviewed the minor the following day. The minor stated that "Gosh" James asked him if he wanted to burglarize the victims' residence. When the minor refused, James left and returned with a Nintendo Wii gaming console, a hard drive, and a DVD player. James told the minor that he would sell the DVD player. The minor left the stolen property on the stairs and returned to his apartment. However, when his neighbor asked the minor to clear the stairway, he took the stolen property to his apartment. The minor told the probation officer, "I'm in here for nothing. I did not enter the house and I was not even a lookout."

On August 4, 2010, the District Attorney filed a juvenile wardship petition (Welf. & Inst., § 602, subd. (a)), alleging that the minor had received stolen property (Pen. Code,

¹ During a police interview on February 12, 2010, the minor admitted that he had participated in a residential burglary with Jared B. The minor took a cell phone and a sweater, while Jared took a Nintendo Wii gaming console and placed it in the minor's backpack. They later sold the console and used the proceeds to buy marijuana. In April 2010, a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) was filed and alleged that the minor had committed a residential burglary (Pen. Code, §§ 459, 460, subd. (a)) and provided a false name to a peace officer (Pen. Code, § 148.9). After the minor admitted the petition, the court declared wardship and imposed, among other things, a search condition.

§ 496, subd. (a)). After the minor admitted the petition, the juvenile court continued wardship and ordered the minor to pay restitution.

A contested restitution hearing was held in March and April 2011. Both Ms. L. and Robert testified about the weekend when their apartment was burglarized. Robert had told the minor and about three other friends that his mother had gone to Mexico. The police returned the Nintendo Wii gaming console and the portable hard drive to Ms. L. Ms. L. testified regarding the values of the Apple iPod touch, the Nike Jordan shoes, the bracelet, and the DVD player. She also testified that she had paid \$10 for childcare in order to be able to attend the hearing.

At the conclusion of the restitution hearing, the minor's counsel argued that there was no evidence that the minor was responsible for the items that had not been recovered. She further argued that requiring the minor to pay restitution for those items would serve no rehabilitative purpose. The prosecutor argued that the minor was liable for the loss of all of the items taken in the burglary, noting that a burglary charge could have been filed against the minor because he was in possession of stolen property. Based on these circumstances and the minor's prior burglary, the prosecutor argued that restitution for all the stolen items was related to his rehabilitation. The court stated: "Frankly, I'm persuaded by the People's argument. The court doesn't get into the middle of what charges are brought. [¶] Often charges are reduced as part of a deal. Often amendments are made as part of an effort to resolve the case. It does not in any way relieve you from the responsibility of making the victim whole. [¶] It may or may not seem fair to you if you did not have the benefit of the items that were taken or missing. But the law is such that you are responsible for making the victim whole." The court ordered \$1,453.03 in restitution.

II. Discussion

The minor contends that the juvenile court abused its discretion in imposing restitution for all the stolen items because the prosecutor did not establish that he committed the burglary.

Welfare and Institutions Code section 730² “grants courts broad discretion in establishing conditions of probation in juvenile cases. [Citation.] ‘[T]he power of the juvenile court is even broader than that of a criminal court.’ [Citation.] The juvenile court’s exercise of discretion in establishing conditions of probation in juvenile cases ‘will not be disturbed in the absence of manifest abuse.’ [Citation.]” (*In re Christopher M.* (2005) 127 Cal.App.4th 684, 692.)

“‘A condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality” [Citation.]’” (*People v. Anderson* (2010) 50 Cal.4th 19, 32.) “[R]estitution has been found proper where the loss was caused by related conduct not resulting in a conviction [citation], by conduct underlying dismissed and uncharged counts [citation], and by conduct resulting in an acquittal [citation].” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

Here, the condition requiring the minor to pay restitution for the losses sustained by the victims was related to the minor’s crime of receiving stolen property. The minor knew that the victims were on vacation and he was seen outside the burglarized apartment with a backpack. Shortly after the burglary occurred, the police found some of

² Welfare and Institutions Code section 730, subdivision (b) provides in relevant part: “When a ward described in subdivision (a) is placed under the supervision of the probation officer . . . , the court may make any and all reasonable orders for the conduct of the ward The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.”

the stolen property in the minor's backpack.³ "Catching a defendant with the goods in possession shortly after a theft rationally suggests a connection to and knowledge of the crime" (*People v. Anderson* (1989) 210 Cal.App.3d 414, 421.) Moreover, Penal Code section 496, subdivision (a), which criminalizes the receipt of stolen property, "is directed at those who knowingly deal with thieves and with their stolen goods after the theft has been committed . . . in order to provide the thieves with a . . . depository for their loot." (*People v. Tatum* (1962) 209 Cal.App.2d 179, 183, abrogated by statute on another ground as stated in *People v. Hinks* (1997) 58 Cal.App.4th 1157, 1165.) Thus, contrary to the minor's position, one who receives stolen property assists the thief. Accordingly, the juvenile court could properly conclude that the minor's criminal conduct was related to the theft of all the property taken during the burglary.

The minor next argues that the restitution order cannot be upheld on rehabilitation grounds. We disagree.

As previously stated, the minor's crime was related to the burglary, and thus serves a rehabilitative purpose. Moreover, the juvenile court could properly impose the restitution order to discourage the minor from being in a situation in which he might be tempted to commit another burglary or to be tempted to receive stolen goods which he knows are the proceeds of a burglary. Thus, the restitution order also deters future criminal conduct.

The minor's reliance on *In re Maxwell C.* (1984) 159 Cal.App.3d 263 (*Maxwell C.*) is misplaced. In *Maxwell C.*, the minor admitted that he had received a stolen car stereo, but denied committing the burglary. (*Id.* at p. 265.) In reversing the order requiring the minor to pay all losses suffered by the victim, *Maxwell C.* reasoned that "restitution must be directly related to the crime charged and must relate to acts by the accused which were committed with the same state of mind as the offense of which

³ The juvenile court was not required to accept the minor's statements that he was not involved in the burglary. (*In re L.K.* (2011) 199 Cal.App.4th 1438, 1446.)

he was convicted in order that the statutory rehabilitative effect can take place. (*People v. Richards* [(1976)] 17 Cal.3d 614, 622.) With minors as well as adults ‘[n]o rehabilitative purpose can be served by forcing a person to confront tendencies which differ from those which induced his crime’ (*Ibid.*) The state of mind with which burglary or vandalism are committed is different than that required for receiving stolen property.” (*Maxwell C.*, at pp. 265-266.) However, *People v. Carbajal*, *supra*, 10 Cal.4th 1114 rejected *Maxwell C.*’s rationale when it overruled *People v. Richards*, *supra*, 17 Cal.3d 614 to the extent that *Richards* had held that in order to require restitution as a probation condition, the probationer must have the same state of mind as that required for the crime which resulted in the victim’s loss. (*People v. Carbajal*, at p. 1126.) Thus, *Maxwell C.* does not provide a basis for reversing the restitution order in the present case.

In sum, the juvenile court did not abuse its discretion in holding the minor liable for all of the items stolen in the burglary.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Elia, J.