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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

H042965
(Santa Clara County
Super. Ct. No. 3-14-JV-40512A)

THE PEOPLE,

Plaintiff and Respondent,

v.

M.S.,

Defendant and Appellant.

Appellant M.S. was declared a ward of the juvenile court after admitting that he committed burglary and related misdemeanor crimes. On appeal, he contests only the amount of restitution ordered by the court. We will affirm the order.

Background

On November 20, 2013, appellant and two other juveniles took property from a San Jose mobile home, which they had entered through a back bedroom window. The three suspects were cited for burglary and possession of stolen property and released to their parents. The next day, appellant and an adult were apprehended in another victim's garage. Appellant was cited and released to his grandfather. Four other acts by appellant were listed in the ensuing petition: defacement of a school by graffiti in June 2013, misdemeanor theft of personal property in October 2013, shoplifting of a bottle of

gin from a Lucky supermarket in January 2014, and defacement by graffiti of another school in January 2014.

The district attorney filed the petition under Welfare and Institutions Code section 602, subdivision (a)¹ on February 11, 2014. The six-count petition alleged two counts of residential burglary (Pen. Code, § 459, 460, subd. (a)), two counts of vandalism (Pen. Code, § 594, subds. (a), (b)(2)(A)), and two counts of petty theft (Pen. Code, § 484-488). On April 22, 2014, the petition was amended to modify the second count of burglary to a misdemeanor charge of trespassing (Pen. Code, § 602, subd. (m)), and appellant admitted those amended allegations. On June 18, 2014, the court declared appellant to be a ward of the court but permitted him to return home on probation under specified conditions, including 45 days on an electronic monitoring program and payment of restitution to the victims.

On October 26, 2015, the court held a restitution hearing, at which the burglary victims of count 1, Khanh N. and his sister, Bao N., testified. Khanh reported \$14,700 in stolen items, including a Macbook Pro computer, an iPad, two handbags (one of which contained Bao's nursing equipment), and jewelry that had been passed down to their mother. A broken window also had to be replaced.²

One of the contested items was a pair of Tiffany earrings, which Bao N. testified her boyfriend had bought for her, in her presence, for \$800 in 2012. She believed that a picture she had produced from the Tiffany website looked "exactly" like the ones stolen from her. The ones advertised on the website were listed at \$600, but Bao did not know how many carats her own earrings were; she knew only that they were the "most similar to the ones that I los[t]."

¹ All further statutory references are to the Welfare and Institutions Code.

² In his victim impact statement to the judge, Khanh stated that the stolen items included the family's car keys, house keys, social security cards, health insurance cards, old driver's licenses, and bank cards.

The court found that all of the restitution claims were justified, including the Tiffany earrings, which the court valued at \$800. The court therefore ordered appellant to pay \$14,700 to the victims of count 1. Appellant was also ordered to pay \$941.50 in restitution to the school he had vandalized in count 3.

Discussion

Appellant challenges only the restitution order requiring him to reimburse the victims of count 1 for the Tiffany earrings. He specifically contends that the court abused its discretion in determining the value to be \$800, because the “statutory amount” of restitution was their replacement value, which Bao N. “established” was \$600.

Section 730.6 governs restitution awards when a minor’s conduct has brought him or her within the provisions of section 602. Subdivision (h)(1)(A) of section 730.6 states: “Restitution [to the victim or victims] 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 minor’s inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. A restitution order . . . to the extent possible, shall identify each victim, unless the court for good cause finds that the order should not identify a victim or victims, and the amount of each victim’s loss to which it pertains, and 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 all of the following: [¶] (A) 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.”

Appellant’s focus is on the last sentence, which, in his view, compelled the court to limit reimbursement of the victims to the \$600 replacement cost of the earrings.

Consequently, he argues, the \$800 award was “arbitrary and capricious” and thus an abuse of discretion. We disagree.

“The purpose of an order for victim restitution is threefold, to rehabilitate the defendant, deter future delinquent behavior, and make the victim whole by compensating him for his economic losses. [Citation.] . . . [¶] The order is not however, intended to provide the victim with a windfall. [Citations.]” (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017 (*Anthony M.*); accord, *In re Travis J.* (2013) 222 Cal.App.4th 187, 204.)

As appellant recognizes, this court reviews the restitution order for abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132 (*Johnny M.*.) In order to meet this standard, appellant must show that the court acted “contrary to law,” failed to “ ‘use a rational method that could reasonably be said to make the victim whole,’ ” or made an arbitrary or capricious order. (*Anthony M., supra*, 156 Cal.App.4th at p. 1016, quoting *People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.) “ ‘A victim’s restitution right is to be broadly and liberally construed.’ [Citation.] ‘ “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.” ’ ” (*Johnny M., supra*, at p. 1132; see also *In re Alexander A.* (2011) 192 Cal.App.4th 847, 853 [court may use any rational method of fixing restitution amount consistent with rehabilitative purpose]; *In re Dina V.* (2007) 151 Cal.App.4th 486, 489 [same].) The standard of proof at a restitution hearing is by a preponderance of the evidence. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542.

Here it is apparent that the juvenile court considered the evidence supplied by Bao N. with the purpose of determining the amount that would “fully reimburse the victims for all economic loss incurred as a result of appellant’s criminal conduct.” (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391.) Having determined—expressly by a preponderance of the evidence—that Bao N. was a credible witness, the court was

entitled to accept her testimony that the earrings cost \$800. It was not required to assume that the earrings displayed on the Tiffany Web site were identical to the stolen ones beyond the superficial image displayed on a user's computer screen. Thus, in order to "fully reimburse" Bao N. for the loss caused by appellant, the court selected an amount "reasonably calculated to make the victim whole." (*Id.* at p. 1391.) We see no indication from the record that the order was irrational, arbitrary, capricious, or inconsistent with the statutory purpose of rehabilitation. (*Id.* at pp. 1391-1392.)

Disposition

The order is affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.

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