

S207314

LIU, J.

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LUIS M.,)
)
 Petitioner,)
)
 v.)
)
 THE SUPERIOR COURT OF THE STATE OF)
 CALIFORNIA FOR THE COUNTY OF)
 LOS ANGELES,)
)
 Respondent,)
)
 _____)
 PEOPLE OF THE STATE OF CALIFORNIA,)
)
 _____)
 Real Party in Interest)

No. S _____
 2d Dist. No. B238460
 (LASC No. MJ20593)



SUPREME COURT
FILED
 DEC 13 2012

Frank A. McGuire Clerk

 Deputy

Original Proceedings
 From the Superior Court Of Los Angeles,
 The Honorable Benny Osorio, Judge Presiding

PETITION FOR REVIEW

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Attorneys for Plaintiff and Real Party in Interest

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LUIS M.,)	No. S _____
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Petitioner,)	2d Dist. No. B238460
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TOPICAL INDEX

	<u>PAGES</u>
PETITION FOR REVIEW.....	1
ISSUE ON REVIEW.....	1
NECESSITY OF REVIEW.....	2
PETITION FOR REHEARING.....	2
STATEMENT OF THE CASE AND OF THE FACTS.....	3
CONTENTIONS ON REVIEW	6
I WHEN A LARGE CITY IS THE CRIME VICTIM IN A GRAFFITI CASE, THE USE OF AN AVERAGE COST MODEL TO CALCULATE RESTITUTION IS REASONABLE	6
A Pursuant To The California Constitution And To Section 730.6, Restitution Is Mandatory To Any Legal Entity Which Has Suffered An Economic Loss Due To Crime, Including In Juvenile Delinquency Matters	6
B A Restitution Award Must Be Logical And Rational, But Need Not Be Exact, And A Large City’s Reliance Upon An Average Cost Model To Calculate Restitution In Graffiti Cases Is Both Logical And Rational	7
C Requiring A Large City To Prove The Actual Costs Of Graffiti Removal In Every Graffiti Vandalism Case Would Be Unduly Burdensome, Nearly Impossible, And Would Almost Guarantee That Vandals Would Escape The Payment Of Restitution In Such Matters	9

D A City's Average Cost Model Should Be Based On The Average Cost To A City Per Unit Of Measure Of Removing, Cleaning, Or Repairing Graffiti And Should Include, But Not Be Limited To, The City's Labor Costs, Property Damage Costs, And Law Enforcement Costs Associated With Correcting Property Damage 11

CONCLUSION 13

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
In re Anthony M. (2007) 156 Cal.App.4th 1010	8
In re Brian N. (2004) 120 Cal.App.4th 591	7
In re Brittany L. (2002) 99 Cal.App.4th 1381	8
In re Dina V. (2007) 151 Cal.App.4th 486	8
In re Johnny M. (2002) 100 Cal.App.4th 1128	7, 11
In re Tommy A. (2005) 131 Cal.App.4th 1580	7
 CODES AND STATUTES	
<u>California Constitution</u>	
Article I, section 28, subdivision (b)	7
<u>California Rules of Court</u>	
Rule 8.500, subdivision (b)(1)	2
Rule 8.1125, subdivision (a)	1
<u>Penal Code</u>	
Section 1202.4	7

Section 594	3
<u>Welfare and Institutions Code</u>	
Section 602	1, 3, 7
Section 730.6	7
Section 730.6, subdivision (k.)	7
Section 730.6, subdivisions (a)(1)	7
Section 730.6, subdivisions (a)(1) and (a)(2)(B)	7
section 742.16	12
Section 742.16, subdivision (a)	13
Section 742.16, subdivision (c)	13
Section 790	3

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LUIS M.,)	
)	No. S _____
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v.)	
THE SUPERIOR COURT OF THE STATE OF)	(LASC No. MJ20593)
CALIFORNIA FOR THE COUNTY OF)	
LOS ANGELES,)	PETITION FOR
)	REVIEW
Respondent,)	
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)	
PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
Real Party in Interest.)	
_____)	

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The People of the State of California, by their counsel, Jackie Lacey, District Attorney of Los Angeles County, petition this Court for review of the Second Appellate District Court of Appeal, Division Seven’s attached opinion in this matter dated October 31, 2012 (hereafter “Court of Appeal Opinion” or “Slip Opn.”), which granted the Petition for Writ of Mandate filed by Petitioner Luis M., a juvenile (Luis Fernando Valencia Maciel, hereafter “Petitioner”). The Court of Appeal opinion ordered the juvenile court to vacate its restitution order, to hold a new restitution hearing, and to determine the amount of restitution to be awarded in a manner consistent with the views expressed in the opinion. In the alternative, the People will request this Court, by separate letter, to order the Court of Appeal Opinion depublished. (Cal. Rules of Court, Rule 8.1125, subdivision (a).)

ISSUE ON REVIEW

Where a large city is the victim of graffiti vandalism and where

that city is tasked with the removal of thousands of acts of graffiti from city property each year, making it nearly impossible and highly impractical to obtain the exact cost to remove each individual act of graffiti, may the city create a cost model for the average cost per unit of measure for the removal, cleanup, or repair of graffiti and can that cost model serve as a rational basis for calculating restitution?

NECESSITY OF REVIEW

Review is needed to settle an important question of law regarding the calculation of restitution when a large city is the victim of graffiti vandalism. May a city create a cost model for the average cost per unit of measure of the removal, cleanup, or repair of graffiti and can that cost model serve as a rational basis for calculating restitution? (See Cal. Rules of Court, Rule 8.500, subdivision (b)(1).) This is an important issue of law because it affects all large cities throughout the State of California, many of whom have previously relied on average cost models to calculate restitution in graffiti cases, due to the fact that it is nearly impossible and highly impractical for a large city to calculate the actual cost of removal, cleanup, or repair for each one of thousands of graffiti cases commonly handled by a large city on a yearly basis.

Review is also needed to secure uniformity of decision (see Cal. Rules of Court, rule 8.500, subdivision (b)(1)), in that the language of the Court of Appeal opinion calls into question whether a city may still rely on any cost model to calculate restitution in a graffiti matter or whether it has to demonstrate its actual costs in each of thousands of cases.

PETITION FOR REHEARING

On November 15, 2012, the People filed a Petition for Rehearing in this case. The People argued that the Court of Appeal should modify its ruling to reflect that the ruling was limited only to the City of Lancaster's (hereafter "the City"), average cost model because the Court of Appeal disapproved of

some of its components, but that the Court of Appeal did not generally prohibit the use of all cost models in all graffiti cases. The People further argued that the ruling should be limited only to the City's average cost model because: (1) when a city is the victim in a graffiti case, the city's average cost for removing any single act of graffiti, appropriately calculated, is a logical and rational method for determining a criminal restitution award; and (2) the requirement that in order to collect criminal restitution, a large city, tasked with thousands of incidents of graffiti to remove from its property each year, must prove the actual costs of removal in every single criminal graffiti vandalism case, is unduly burdensome and realistically guarantees that graffiti vandals will escape the payment of criminal restitution when a large city is the victim. In 2006, the City had 3,200 incidents of graffiti to remove. (Exhibit C, p. 7.)¹

On November 30, 2012, the Petition for Rehearing was denied. (Docket, Case No. B238460, found at the official website of the California Court of Appeal at <http://appellatecases.courtinfo.ca.gov>.)

STATEMENT OF THE CASE AND OF THE FACTS

On July 14, 2011, Petitioner pled to one count of felony vandalism in violation of Penal Code section 594, pursuant to a Welfare and Institutions Code² section 602 wardship petition. (Exhibits A and B.) He was placed on section 790 Deferred Entry of Judgment probation. (Exhibit B.)

On November 17, 2011, a restitution hearing was held in this matter, the Honorable Judge Benny Osorio presiding. (Exhibit C, p. 1:1-4.) During the hearing, Ms. Marlene Navarro (hereafter "Ms. Navarro"), testified

1. All exhibits referenced herein are attachments to Petitioner's Petition for Writ of Mandate.

2. All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

that she was a crime prevention officer for the City, which had been her job for four years. (*Id.* at pp. 2:25-3: 3.) She stated that one of her job duties was to determine the costs of restitution for cleaning up graffiti in the City. (*Id.* at p. 3:3-7.) In this case, in order to determine the amount of restitution owed to the City, she relied upon a document called the City of Lancaster Graffiti Mitigation Cost Model (hereafter “Cost Model”). (Exhibit C, p. 3:8-11; Exhibit D.) The Cost Model was dated 9/5/2006 and was created with figures from 2006. (Exhibit C, p. 4:17-21; Exhibit D.)

The Cost Model reflected that the average cost to the City of Lancaster to clean up one incident of graffiti is \$431.32. (Exhibit C, pp. 7:26-8:1.) The Cost Model created five expense categories (labor, equipment, materials, contract services, and traffic control/risk management) attributable to graffiti removal by three of its departments (Public Works Abatement, Public Works Traffic, and Parks, Recreation, and Arts). (*Id.* at pp. 4:22-6:28.) The total amount of the five cost categories for the three departments was \$1,381,208. (*Id.* at p. 7:1-18.) The City then divided that number by the total number of calls for graffiti removal service that it received in 2006, which was 3,200 incidents, for an average cost of \$431.32 to repair one incident of graffiti. (*Id.* at pp. 7:18-8:1.) Ms. Navarro multiplied that number by the nine incidents of graffiti attributable to Petitioner and requested a restitution award in the amount of \$3,881.88. (*Id.* at pp. 8:15-9:11.) Petitioner’s conduct involved nine incidents of tagging in six different locations: on a street arrow sign, on a high voltage electrical box, on a green metal electrical box, and on multiple green and gray metal electrical boxes. (*Id.* at pp. 9:9-10:1.) Petitioner also tagged on a wall or a fence that did not belong to the city of Lancaster and that incident was not included in the restitution order. (*Id.* at p. 10:3-12.)

The trial court ordered restitution in the amount requested: \$3,881.88. (Exhibit C, p. 32:12-14.) In support of its order, the trial court stated as follows:

But this estimate that the city is using is based on a cost model of their annual costs divided by a certain amount to try to get as close as possible to what it should cost to fix the walls or the property damage.

Because at a certain point in time we can be going back and forth as to the cost of the paint; whether it was made in the United States or whether it was made in a foreign country. Was the labor cost in a foreign county cheaper than it was here? The packaging? The production? All that.

(*Id.* at p. 29:1-10.)

Petitioner filed a Petition for Writ of Mandate in the Court of Appeal contesting the restitution award. He contended that the average cost of repair of graffiti, as computed by the city, included costs that were not attributable to him and did not reflect the actual losses incurred by the City for his conduct.

The People opposed the Petition for Writ of Mandate arguing as follows: (1) that the standard of review of a trial court's restitution order is for abuse of discretion and such order may not be overturned unless arbitrary or capricious; (2) that the trial court's reliance on the city's average cost per incident of graffiti removal was indeed rational; (3) that the trial court's reliance on the average cost model was neither arbitrary nor capricious; and (4) that there is no requirement that a restitution order be limited to the exact amount of loss.

On October 31, 2012, the Court of Appeal granted the Petition, holding as follows:

Here, the estimate was based on an average of all costs of graffiti cleanup, with no consideration of *any individualized facts*, such as the type of graffiti Luis placed on public property *and the extent of the efforts necessary to remove it*....[¶] In sum, the

City's restitution model cannot provide the basis for calculating a restitution award, in that it includes sums which are not economic losses by the direct victim of Luis's graffiti vandalism, and the sums included for cleanup do not reflect the *actual cost* of the graffiti cleanup.

(Slip Opn., pp. 7-8, italics added.)

The People now seek review of the Court of Appeal's opinion, specifically regarding whether a city may create a cost model for the average cost per unit of measure of the removal, cleanup, or repair of graffiti and whether that cost model may serve as a rational basis for calculating restitution.

CONTENTIONS ON REVIEW

I

WHEN A LARGE CITY IS THE CRIME VICTIM IN A GRAFFITI CASE, THE USE OF AN AVERAGE COST MODEL TO CALCULATE RESTITUTION IS REASONABLE

A

Pursuant To The California Constitution And To Section 730.6, Restitution Is Mandatory To Any Legal Entity Which Has Suffered An Economic Loss Due To Crime, Including In Juvenile Delinquency Matters

Following the passage in 1982 of Proposition 8, the state Constitution was amended, as follows, to create a constitutional right to restitution for victims of crime:

It is the *unequivocal intention* of the People of the State of California that all persons who suffer losses as a result of criminal activity *shall have the right to restitution* from the persons convicted of the crimes for losses they suffer. [¶] Restitution *shall* be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.

(Cal. Const., art. I, section 28, subd. (b), italics added.)

Section 730.6 governs restitution in cases where a minor is adjudicated a ward of the court pursuant to section 602. The statute parallels Penal Code section 1202.4, which governs adult restitution. In pertinent part, section 730.6 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) The court *shall* order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following: [¶] ... [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

(Section 730.6, subdivisions (a)(1) and (a)(2)(B), italics added.)

Clearly, therefore, restitution to crime victims is mandatory, even in delinquency juvenile matters. In addition, restitution is available not just to persons who are victims of crime but to “any legal entity.” (Section 730.6, subdivision (k).)

B

A Restitution Award Must Be Logical And Rational, But Need Not Be Exact, And A Large City's Reliance Upon An Average Cost Model To Calculate Restitution In Graffiti Cases Is Both Logical And Rational

“The juvenile court is vested with discretion to order restitution in a manner that will further the legislative objectives of making the victim whole, rehabilitating the minor, and deterring future delinquent behavior.” (*In re Tommy A.* (2005) 131 Cal.App.4th 1580, 1587-88; *In re Brian N.* (2004) 120 Cal.App.4th 591, 593-594.) The standard of review of a restitution order is abuse of discretion. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) A victim's restitution right is to be broadly and liberally construed. (*In re*

Brian N., *supra*, 120 Cal.App.4th at pp. 593-594.) “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.” (*In re Brian N.*, *supra*, 120 Cal.App.4th at pp. 593-594; *In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132.) The court abuses its discretion when it acts contrary to law or fails to “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.” (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) The California Court of Appeal has also stated:

While the amount of restitution cannot be arbitrary or capricious, *there 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.

(*In re Dina V.* (2007) 151 Cal.App.4th 486, 489; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391, italics added.)

Accordingly, a restitution order does not have to reflect the exact amount of a victim’s actual loss, it merely has to be logical and rationally based. Particularly under circumstances as in this case where it is impractical or nearly impossible to obtain the exact amount of restitution, a large city’s reliance on an average cost model to calculate a restitution award is both logical and rational.

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C

Requiring A Large City to Prove The *Actual Costs* Of Graffiti Removal In Every Graffiti Vandalism Case Would Be Unduly Burdensome, Nearly Impossible, And Would Almost Guarantee That Vandals Would Escape The Payment Of Restitution In Such Matters

The Court of Appeal's opinion disapproved of the City's Cost Model, stating that it "was based on an average of all costs of graffiti cleanup, with no consideration of *any individualized facts*, such as the type of graffiti Luis placed on public property *and the extent of the efforts necessary to remove it.*" (Slip Opn. at p. 7, italics added.) In addition, the Court of Appeal's opinion stated that the City's restitution model cannot provide the basis for calculating a restitution award because "...the sums included for cleanup do not reflect the *actual cost of the graffiti cleanup.*" (Slip Opn. at p. 7, italics added.) The impact and intent of the statements, particularly those in italics, are contrary to prior court rulings on restitution and create a conflict in the case law. Indeed, without specifically stating that the use of cost models are prohibited, the language still seems to indicate that the use of an average cost model by a large city is never appropriate in a graffiti case and that a restitution award would always require the inclusion of individualized facts, of specific information about the extent of the city's efforts to remove the graffiti, and of the city's actual costs of removal and repair. As discussed below, this is an untenable situation.

It would be impractical and unduly burdensome to require a large city to specifically track the extent of its graffiti removal efforts and its actual costs in every single one of thousands of incidents it handles in a year. As previously stated, the City of Lancaster responded to 3,200 incidents of graffiti in 2006. (Exhibit C, p. 7.) Six years later, the problem of juvenile graffiti

continues and if anything, those numbers are likely to have risen; one only has to drive through certain parts of any large city to form this conclusion. Employees, who are hired by any city to clean, remove, or repair graffiti, are unlikely to be equipped to make a reliable record of their efforts. Therefore, if cost models are prohibited and actual cost records become necessary, a city would be required to hire other employees, more sophisticated employees, supervisors with training in this regard, to keep track of the size and location of the graffiti, how long it took to remove it, what work was done to remove it, whether a sprayer, sandblaster, high water pressure or other equipment was used, how much/what kind of solvent was used to remove it, or paint to cover it. A city would also have to hire employees to create a computer database to preserve that information, as well as employees responsible for inputting the information into the database and for maintaining the database and to make it searchable if the perpetrator is apprehended. The burden of the effort would most likely outweigh a large city's desire to engage in recouping its losses. Numerous anomalous results are inherent in the creation of an actual cost scheme so burdensome that cities are likely to opt out of any recoupment efforts. One such result is that it would guarantee that some graffiti vandals would escape the payment of criminal restitution, even though restitution is constitutionally and statutorily mandated. Another anomalous result is that graffiti would ultimately be encouraged because offending minors and their parents would not be required to bear the cost of their deeds. Finally, such a scheme would fail to protect a large city's fiscal integrity by requiring it to hire and pay more sophisticated employees and expend more money in order to recoup its losses for the removal, cleanup, and repair of graffiti.

Accordingly, the People urge this Court to grant review in this matter to determine an important issue of law, namely whether an average cost model may serve as a rational basis for calculating restitution in graffiti cases

where a large city is the crime victim.

D

A City's Average Cost Model Should Be Based On The Average Cost To A City Per Unit Of Measure Of Removing, Cleaning, Or Repairing Graffiti And Should Include, But Not Be Limited To, The City's Labor Costs, Property Damage Costs, And Law Enforcement Costs Associated With Correcting Property Damage

The Court of Appeal's opinion specifically disapproved of the City's Cost Model due to some of its components, including law enforcement costs (because they included investigatory costs and not just the costs of correcting the consequences of vandalism), the general costs of maintaining vehicles and equipment used in graffiti abatement, and the costs of contract services for tracking graffiti. (Slip Opn at pp. 6-7.) A cost average should include, but not be limited to, a city's labor costs of employees who repair graffiti damage as well as the costs to repair the damage (e.g., the costs of solvents or paint or replacement). In *In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1129, a minor was declared a ward of the juvenile court following his admission to destruction of school property. The juvenile court ordered the minor to pay restitution in an amount that included not only reimbursement for property damage, but also the labor costs of salaried employees who repaired the damage. (*Ibid.*) The minor appealed and the Court of Appeal affirmed the restitution order, holding that a restitution award may properly include the reasonable value of employee work product lost as a result of the criminal conduct of another. (*Id.* at p. 1134.) The Court Appeal reasoned as follows:

Any other rule would encourage public entities and other victims to incur out-of-pocket expenses rather than try to repair damage to property in-house, an anomalous result given that the likelihood of actually receiving reimbursement from a criminal

defendant via restitution order is problematic at best. No public policy is served by such a rule....

(Ibid.)

The Court of Appeal also observed in that case:

Particularly in light of restitution being available to “any legal entity” (Sec. 730.6, subd. (k)), courts must remain mindful of real world business considerations in calculating loss.

(Id. at p. 1133.)

Accordingly, a cost model should include, but not be limited to, labor costs and the costs of fixing, repairing, or replacing the damaged property. In the case at bar, the City hired sheriff deputies to respond to graffiti calls to identify it, photograph, and investigate it. (Exhibit C, p. 3:17-26.) To the extent that law enforcement is involved in a graffiti matter in a manner which is outside of the scope of their ordinary duties (e.g., arrest and investigation) and which assists with the repair or replacement of the defaced property, then such law enforcement costs should also be included in a cost model.

The Court of Appeal criticized the City Cost Model for not taking any individualized facts into consideration. (Slip Opn., p. 7.) An average cost model should be based upon the average cost per unit of measure to remove, clean, or repair damaged property. Petitioner in this case placed graffiti on one street sign and eight electrical boxes. (Exhibit C, pp. 9:9-10:1.) These property items, though somewhat numerous, were likely to have all been relatively small objects versus a case where a minor defaces an entire wall. Therefore, a cost model should be based on the average cost to a city per a unit of measure (e.g., a square inch or square foot) to remove, clean, or repair graffiti. In fact, section 742.16 already provides for a city to create that type of cost model if the city elects by ordinance to have the probation officer of the

county recoup its losses due to graffiti. (Section 742.16, subdivision (a).) That statute states in pertinent part:

(c) If a city enacts an ordinance pursuant to ... subdivision (a), the ordinance ... shall contain findings ... of the average cost to the city...per unit of measure of removing graffiti and other inscribed material and of repairing and replacing property of the types frequently defaced with graffiti or other inscribed material that cannot be removed cost effectively. ... Findings of costs per unit of measure include, but are not limited to, findings of the costs per square inch of removing painted graffiti or of the costs per item of replacing items that have been etched.

(Section 742.16, subdivision (c).)

Similarly, if a city creates a cost model to collect directly for itself restitution for property damaged due to graffiti rather than try to recoup its losses through the county probation officer, the cost model should be based on the average cost per unit of measure to remove, clean, or repair the graffiti.

CONCLUSION

Because of the need to resolve the issues herein, and for all the reasons stated, the People respectfully submit that review should be granted.

Respectfully submitted,

JACKIE LACEY
District Attorney of
Los Angeles County

By *Phyllis Asayama*

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Attorneys for Real Party In Interest

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed Petition for Review contains approximately 4,626 words including footnotes, which is less than the 8,400 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.



CASSANDRA HART
Deputy District Attorney

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LUIS M.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

B238460

(Los Angeles County
Super. Ct. No. MJ20593)

COURT OF APPEAL - SECOND DISTRICT

FILED

OCT 31 2012

JOSEPH A. LANE

Clerk

Deputy Clerk

ORIGINAL PROCEEDING; petition for writ of mandate. Benny C. Osorio,
Judge. Petition granted.

Ronald L. Brown, Public Defender, Albert J. Menaster, Guillermo Arevalo-Farias,
and Rourke Stacy, Deputy Public Defenders, for Petitioner.

Steve Cooley, District Attorney, Phyllis Asayama and Cassandra Hart, Deputy
District Attorneys, for Respondent.

INTRODUCTION

Luis M. petitions this court for a writ of mandate compelling the Superior Court to vacate its November 17, 2011 order, requiring him to pay restitution in the amount of \$3,881.88 to the City of Lancaster and to conduct a hearing to determine the actual amount of economic loss caused by his vandalism and to order restitution in that amount. We agree that the restitution award was erroneous and grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On May 19, 2011, a petition was filed under Welfare and Institutions Code section 602 alleging that Luis committed vandalism resulting in damage over \$400 in violation of Penal Code section 594, subdivision (a), by placing graffiti on walls, signs, electrical boxes, and metal boxes belonging to the Clear Skies Mobile Home Park and the City of Lancaster (City). On July 14, Luis admitted the charge. The juvenile court found the petition true but did not sustain the petition. It placed Luis on deferred entry of judgment probation for 12 to 36 months pursuant to Welfare and Institutions Code section 790.

The court held a restitution hearing on November 17. At the hearing, Marleen Navarro (Navarro), Crime Prevention Officer for the City, testified that one of her duties was to calculate the cost of graffiti cleanup in order to determine restitution. In making that determination, the City used a restitution model which was created using figures from 2006.

Navarro testified that the City's restitution model had a number of components: (1) the labor cost for public works personnel who clean up the graffiti and for the sheriff's deputy who investigates the graffiti call; (2) the equipment cost for the vehicles, sprayers and other equipment used for graffiti abatement; (3) the materials cost for paint and cleaning supplies used in graffiti cleanup; (4) the cost of contract services for tracking graffiti; and (5) traffic control and risk management costs.

For 2006, the cost of all components was \$1,380,208. The average number of calls regarding graffiti per year is 3,200. Using these figures, Navarro calculated the cost per graffiti incident to be \$431.32.

In reviewing the vandalism report resulting from Luis's tagging, Navarro noted there were nine incidents of vandalism at six different locations, involving electrical boxes and traffic signs. She calculated the cost for cleanup to be \$3,881.88.

On cross-examination, Navarro testified as to what costs were included in the components. She acknowledged that she did not know the particular costs incurred in the cleanup of Luis's tagging.

The court accepted the People's argument that it was appropriate to calculate restitution using the City's restitution model. It ordered Luis to pay \$3,881.88 in restitution.

DISCUSSION

A minor against whom a Welfare and Institutions Code section 602 petition has been filed and found true may be awarded deferred entry of judgment under certain conditions. (*Id.*, § 790.) If the minor performs satisfactorily the conditions of the deferred entry of judgment, which may include restitution, then the petition will be dismissed and the court records sealed. (*Id.*, §§ 793, 794.) Since there is no appealable judgment (*id.*, § 800; *Ricki J. v. Superior Court* (2005) 128 Cal.App.4th 783, 790), a challenge to a condition of deferred entry of judgment is by writ of mandate. (See, e.g., *G.C. v. Superior Court* (2010) 183 Cal.App.4th 371, 374; *Terry v. Superior Court* (1999) 73 Cal.App.4th 661, 663.)

We review a restitution order for abuse of discretion. “‘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.’” [Citations.]” (*In re Johnny M.* (2002)

100 Cal.App.4th 1128, 1132; accord, *People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.)

However, “[t]he scope of discretion always resides in the particular law being applied, i.e., in the “legal principles governing the subject of [the] action” Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an “abuse” of discretion.’ [Citations.]” (*Ohton v. Board of Trustees of California State University* (2007) 148 Cal.App.4th 749, 766, disapproved on another ground in *Runyon v. Board of Trustees of California State University* (2010) 48 Cal.4th 760, 775; accord, *In re K.F.* (2009) 173 Cal.App.4th 655, 661.)

Welfare and Institutions Code section 730.6 (section 730.6), subdivision (a)(1), provides: “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.” Under subdivision (h) of section 730.6, restitution “shall be imposed in the amount of the losses, as determined.” The restitution award “shall be of a dollar amount sufficient to fully reimburse the victim . . . 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 . . . [f]ull 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.” (*Id.*, subd. (h)(1).)

The purposes of victim restitution under section 730.6 are rehabilitation of the minor, deterrence of future delinquent behavior and compensation of the victim for economic losses. (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017.) When ordering restitution under section 730.6, the juvenile 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.] . . . “[W]hile the amount of restitution cannot be arbitrary or capricious, ‘there is no requirement the restitution order be limited to the exact amount of the loss in which the

[minor] is actually found culpable’ [Citation.]” [Citation.]” (*In re Dina V.* (2007) 151 Cal.App.4th 486, 489; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1391.) Nevertheless, there are established limits to the court’s exercise of discretion in fixing restitution, as we discuss below.

Luis’s first challenge to the City’s restitution model is that law enforcement costs are not recoverable as restitution where the law enforcement agency is not a direct victim of the criminal conduct. We agree in part.

As the court observed in *In re Johnny M., supra*, 100 Cal.App.4th at page 1132, “[s]ection 730.6 expressly states that ‘economic losses,’ not monies expended, is the governing test” in determining restitution. Thus, the costs of law enforcement investigation are not a proper component of restitution.

In *People v. Martinez* (2005) 36 Cal.4th 384, the defendant was convicted of attempting to manufacture a controlled substance. The restitution order included the cost to the Department of Toxic Substances Control to clean up the defendant’s illegal drug laboratory. (*Id.* at p. 387.) The Supreme Court held this was impermissible. Penal Code section 1202.4, subdivision (k),¹ provides for restitution to a “direct victim” of the crime. A governmental entity may recover under that section when the entity is the victim, for example, when the entity’s property is stolen or damaged. (*Martinez, supra*, at p. 393.) Since the defendant’s crime was not committed against the Department of Toxic Substances Control, the department was not a direct victim entitled to recover its cleanup costs as restitution under Penal Code section 1202.4, subdivision (k). (*Id.* at pp. 393-394.)²

¹ Penal Code section 1202.4, which is applicable to adult offenders, parallels section 730.6. (*People v. Martinez, supra*, 36 Cal.4th at p. 394, fn. 2.)

² The court noted that the Department of Toxic Substances Control could seek reimbursement for its cleanup costs under provisions of the Health and Safety Code, “the ‘exclusive’ means by which a government entity that is not a direct victim of a crime may recoup its costs of eradicating or cleaning up toxic or hazardous substances resulting from controlled substance crimes.” (*People v. Martinez, supra*, 36 Cal.4th at p. 394.)

Similarly, in *People v. Ozkan* (2004) 124 Cal.App.4th 1072, the court held the “public agencies are not directly ‘victimized’ for purposes of restitution under Penal Code section 1202.4 merely because they spend money to investigate crimes or apprehend criminals.” (*Id.* at p. 1077.) Investigative costs are recoverable only if there are other statutes which provide for such recovery. (See *id.* at pp. 1078-1081; see also *People v. Torres* (1997) 59 Cal.App.4th 1, 4-5 [law enforcement agency investigating drug sales not a direct victim entitled to restitution under Penal Code section 1202.4 of the amount spent on undercover purchases of illegal drugs].)

Based on the foregoing, it is clear that the sheriff’s department is not a direct victim of Luis’s vandalism, and law enforcements costs for investigation of graffiti vandalism are not recoverable as restitution. The juvenile court therefore abused its discretion in including law enforcement investigatory costs in the restitution order. (*Ohton v. Board of Trustees of California State University, supra*, 148 Cal.App.4th at p. 766.)

This is not to say that where law enforcement costs are incurred as a direct result of a crime, for example, in correcting the consequences of vandalism, they are not recoverable as restitution. The City’s restitution model is not so limited and includes costs, such as investigatory costs, which are not recoverable.

Luis also contends that the juvenile court erroneously based its restitution order on the City’s restitution model because there was no evidence as to which components of the model were used to abate Luis’s graffiti or as to the actual cost of the abatement. Therefore, he claims, there was no factual or rational basis for the order. Again, we agree.

Section 730.6, subdivision (h)(1), provides that the restitution award must be in an amount “sufficient to fully reimburse the victim . . . for all determined economic losses incurred as the result of the minor’s conduct.” Where the minor’s conduct causes property damage, that amount is “the actual cost of repairing the property when repair is possible.” (*Ibid.*) This includes both the cost of the materials used in the cleanup and

repair and the labor cost for public works personnel who clean up the graffiti. (See, e.g., *In re Johnny M.*, *supra*, 100 Cal.App.4th at pp. 1131, 1134.)

The general costs of maintaining vehicles and equipment used in graffiti abatement and of contract services for tracking graffiti are not economic losses incurred as a result of a minor's vandalism. These costs fall into the category of monies expended for graffiti abatement, which are not economic losses for which restitution is available under section 730.6. (*In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132; accord, *People v. Ozkan*, *supra*, 124 Cal.App.4th at p. 1077.) In the absence of evidence that any of these costs were economic losses by the victim of Luis's vandalism, they are not properly included in the restitution award.

The People rely on *People v. Goulart* (1990) 224 Cal.App.3d 71 for the proposition that a restitution award may be based on a loss or cost estimate. The case is inapposite. In *Goulart*, the defendant tampered with the utility meters at his home, so there was no way to determine the actual amount of the utility's loss. After discovering the tampering, the utility verified the defendant's actual energy consumption and used that figure to estimate its loss. (*Id.* at p. 77.) The court approved the utility's method of calculating its loss as rational. (*Id.* at p. 83.)

In *Goulart*, the estimate was based on the defendant's own energy use. Here, the estimate was based on an average of all costs of graffiti cleanup, with no consideration of any individualized facts, such as the type of graffiti Luis placed on public property and the extent of the efforts necessary to remove it. *Goulart* cannot be read to permit such an estimation.

In sum, the City's restitution model cannot provide the basis for calculating a restitution award, in that it includes sums which are not economic losses by the direct victim of Luis's graffiti vandalism, and the sums included for cleanup do not reflect the actual cost of the graffiti cleanup. The juvenile court therefore abused its discretion in

ordering restitution based on the restitution model. (*In re Johnny M.*, *supra*, 100 Cal.App.4th at p. 1132.)³

DISPOSITION

The petition for writ of mandate is granted. The juvenile court is directed to vacate its restitution order and to hold a new restitution hearing, determining the amount of restitution to be awarded in a manner consistent with the views expressed herein.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

³ In light of this conclusion, we need not address Luis's claim that Navarro's testimony lacked foundation.

DECLARATION OF SERVICE BY MAIL

The undersigned declares under the penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause and employed in the Office of the District Attorney of Los Angeles County with offices at 320 West Temple, Suite 540, Los Angeles, California 90012-3266. On the date of execution hereof I served (“**PETITION FOR REVIEW**”) the attached document by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail in the County of Los Angeles, California, addressed as follows:

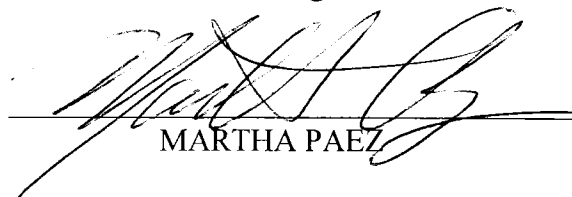
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Executed on December 12, 2012, at Los Angeles, California.


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Attorney for Real Party In Interest

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

LUIS M.,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

) No. S

) 2d Dist. No

) B238460

) (LASC No.

) MJ20593)

) Amended Proof of Service

RECEIVED

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CLERK SUPREME COURT

I, Martha Paez, declare the following:

I am over the age of 18 and not a party to this action. I am a resident of or employed in the county where the mailing occurred. My business address is 320 W. Temple Street, Ste. 540 Los Angeles, California 90012.

I served a copy of the documents entitled "Petition For Review", in the case of *People v. Luis M.*, Case No. B238460 by placing a true copy of said documents in the Los Angeles County Mail Service on December 12, 2012. I

thereon fully prepaid in the United States mail in the County of Los Angeles, CA
addressed as follows:

Clerk of the Court of Appeal
Division Seven
300 South Spring Street
Los Angeles, California 90013

I declare under penalty of perjury that the foregoing is true and correct and that
this declaration is executed on (December 12, 2012), at Los Angeles, California.

Executed on December 13, 2012, at Los Angeles, California.



MARTHA PAEZ