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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re JOSE O, a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B254797
(Super. Ct. No. 2013000182)
(Ventura County)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE O.

Defendant and Appellant.

Jose O. (minor) appeals from the judgment entered after the juvenile court sustained a wardship petition filed pursuant to Welfare and Institutions Code section 602.¹ The court found true allegations that, in the City of Oxnard (City), minor had committed felony vandalism by defacing property with graffiti and causing damage of \$400 or more. (Pen. Code, § 594, subds. (a)(1), (b)(1).) Minor's sole contention is that the juvenile court abused its discretion by ordering him to pay City, as restitution, an administrative fee of \$131.57 for each of the 232 incidents of graffiti that City abated, i.e. \$30,524.24. This fee was in addition to the actual labor, equipment, and material costs incurred by City.

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

The controlling authority is our Supreme Court's recent opinion in *Luis M. v. Superior Court* (2014) 59 Cal.4th 300 (*Luis M.*), which was filed on the same day that minor filed his opening brief. Pursuant to *Luis M.*, we reverse.

Restitution Hearing

City sought restitution of \$44,164.97 for 232 incidents of graffiti (tags) attributable to minor. Cynthia Hookstra, a management analyst employed by City, testified concerning the calculation of the amount of restitution. She explained that City has a "Graffiti Action Program . . . that is responsible for removing . . . graffiti throughout the city." The program has both "direct" and "indirect" costs. Direct costs are the costs of labor, equipment, and material "needed to remove [a] particular tag off the wall." Direct costs also include the cost of photographing the graffiti and cataloguing the photographs.

Indirect, or administrative costs, "cover the overhead cost of the administrators of the program." Indirect costs include the salaries of "the Graffiti Action coordinator" and an "office assistant." They also include the costs of (1) maintaining an office, (2) hiring a telephone answering service, and (3) making phone calls to arrange for a graffiti removal crew to respond to a particular location. In addition, indirect costs include about 30 minutes to one hour each morning when work crews gather supplies and clean their equipment.

To cover the indirect costs, City charges an administrative fee of \$131.57 for each tag that a work crew removes. If a crew removes multiple tags by the same tagger at the same location, City will charge only one administrative fee. But if the crew has to "pack up and move [its] equipment" to another location to remove graffiti by the same tagger, City will charge an additional \$131.57 administrative fee. For example, on a single day work crews removed minor's graffiti from three different locations. City charged an administrative fee of \$131.57 for each location for a total of \$394.71.

Trial Court Ruling

The juvenile court ordered minor to pay City \$44,164.97 for 232 incidents of graffiti that City had abated. The People note that this amount "apparently included an

added administrative cost of \$131.57 for each of the 232 acts," i.e. \$30,524.24 The court concluded "that the administration and removal costs are reasonable and were actually incurred."

Minor's and the People's Contentions

Minor concedes that "it was appropriate for the lower court to require [him] to pay for the actual [i.e., direct] cost of removing the graffiti." But he argues that the court erroneously included an administrative fee of \$131.57 for each incident of graffiti that City abated. Minor asserts: "Only the actual cost[s] of the cleanup are recoverable. . . . [¶] The restitution order must be corrected to remove the administrative fee attached to each [of the 232] incident[s] of graffiti." If minor is correct, the amount of restitution must be reduced by \$30,524.24 to \$13,640.73.

The People maintain that the full restitution award was proper pursuant to section 730.6, subdivisions (h) and (h)(1), which provide that the court shall award 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 for which the minor was found to be a person described in Section 602," including the "actual cost of repairing the property when repair is possible." The term "victim" includes "[a]ny governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material . . . and that has sustained an economic loss as the result of [vandalism in] violation of Section 594 . . . of the Penal Code." (§ 730.6, subd. (j)(2).)

Discussion

Luis M., supra, 59 Cal.4th 300, is dispositive of this appeal and requires a reversal. Luis M. challenged the juvenile court's determination of the amount of restitution he was required to pay to the City of Lancaster for nine incidents of graffiti that the city had abated. A crime prevention officer "testified that in 2006 [Lancaster] had spent \$1,380,208 abating approximately 3,200 incidents of graffiti at an average cost of \$431.32 per incident." (*Id.*, at p. 304.) The officer multiplied the \$431.32 average cost figure times nine to arrive at a total cost of \$3,881.88 for the nine incidents of graffiti.

The juvenile court ordered restitution in this amount. Our Supreme Court "granted review to decide how a juvenile court may calculate restitution to a governmental entity for graffiti abatement." (*Ibid.*)

The Supreme Court concluded that the "language [of section 730.6, subdivision (h)] requires the [juvenile] court to take into account the conduct of the minor from whom restitution is sought." (*Luis M., supra*, 59 Cal.4th at p. 308.) "[A] restitution award for economic losses [citation] may include the materials, equipment, and labor costs incurred for remediation. Preexisting expenditures, such as salaried employees and equipment purchases, may be included provided those costs can be fairly apportioned on a pro rata basis to the minor's conduct. [Citation.]" (*Id.*, at p. 309.) "While the [juvenile] court need not ascertain the exact dollar amount of the City's losses [citation], its calculation under section 730.6 must have some factual nexus to the damage caused by the minor's conduct." (*Ibid.*) The Supreme Court reversed the juvenile court's restitution order because it had "based its estimate on an *average of all costs* of graffiti cleanup rather than a rational estimate of costs occasioned by Luis's conduct." (*Ibid.*)

Here, the administrative fee of \$131.57 for each incident of graffiti abatement was based on an average of administrative costs for "graffiti cleanup rather than a rational estimate of costs occasioned by [minor's] conduct." (*Luis M., supra*, 59 Cal.4th at p. 309.) The juvenile court therefore abused its discretion in requiring minor to pay this fee.

The *Luis M.* court noted that sections 742.14 and 742.16 "authorize[] a city or county to calculate and recover restitution based on average costs rather than requiring individualized proof under the general provisions of section 730.6." (*Luis M., supra*, 59 Cal.4th at p. 306.) Sections 742.14 and 742.16 "contain specific guidelines for what costs may be included. They also require periodic review and adoption of a local ordinance." (*Id.*, at p. 303.) The People do not mention these sections, so we assume that they are inapplicable.

Disposition

The judgment is reversed insofar as it orders minor to pay to City restitution of \$44,164.97. In all other respects, the judgment is affirmed. The matter is remanded to

the juvenile court with directions to conduct a new restitution hearing upon reasonable notice to the parties. The hearing shall be limited to determining the appropriate amount of restitution for the 232 incidents of graffiti attributable to minor.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

David r. Worley, Judge
Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of Appeal, for Defendant and Appellant.

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