In Juvenile Vandalism Case Involving Graffiti, Restitution Cannot Include Investigation Costs

In 2011 in Lancaster, California, Luis M., a juvenile, was arrested for committing vandalism. The alleged damage was over \$400, a violation of Penal Code § 594 (a) ("Felony Vandalism"). The petition filed in court alleged that Luis M. placed graffiti on walls, signs, electrical boxes and metal boxes belonging to Clear Skies Mobile Home Park in Lancaster.

Luis M. later entered into a plea bargain wherein he was placed on deferred entry of judgment (DEJ) probation for twelve to thirty-six months under Welfare and Institutions Code § 790. As part of the plea bargain, Luis M. was also ordered to pay restitution for the damage he caused.

At the restitution hearing, a police officer from the City of Lancaster testified that, using a "restitution model," he determined that the amount Luis M. owed was \$3,881.88. The trial court, Judge Benny C. Osorio, accepted this amount as proper and ordered Luis M. to pay this amount.

Luis M. appealed this order by filing a writ of mandate to the Second Appellate District. The reason Luis M. challenged the order by writ is because there was no appealable judgment (Luis M. was "awarded" deferred entry of judgment under Welfare and Institutions Code § 790, which means that if the minor performs satisfactorily, the underlying petition is dismissed and the court records are sealed).

The Second Appellate District, in *Luis M. v. The Los Angeles Superior Court* (2012 DJDAR 15097) reviewed the trial court's ruling using the "abuse of discretion" standard. The court noted first that great deference is afforded a restitution award amount because "a victim's restitution right is to be broadly and liberally construed."

Indeed, our experience in challenging any prosecution evidence offered at a restitution hearing is usually met with disfavor from the judge. The court often views such hearings as almost one-sided affairs. If a defendant challenges any amount or testimony, the judge is usually surprised and inclined to overrule any such objection.

The appellate court further noted that there must be some "factual and rational basis" for the award. *In re Johnny M.* (2002) 100 Cal. App. 4th 1128, 1132. In the regard, Welfare and Institutions Code § 730.6 (b) requires that the amount ordered "shall be of a dollar amount sufficiently to reimburse the victim... for all determined economic loss... as a result of the minor's conduct." The purpose is to make the victim whole (Penal Code § 1202.4 is the statue governing restitution amounts for adults).

Turning to the trial court's award of \$3,881.88, the appellate court found it was too high. The City of Lancaster, after all, included in the sum law enforcement costs. These were not attributable to the losses of the mobile home park. Indeed, the Lancaster Sheriff's Department was not a direct victim of Luis M.'s graffiti.

Luis M. also argued that the police officer from the City of Lancaster failed to testify about what costs were expended to clean up his graffiti. The appellate court agreed with Luis M. on this, too. The police officer testified only to general costs that the City of Lancaster spent, but not to specific cleanup of Luis M.'s vandalism.

Consequently, the appellate court granted the writ of mandate. It ordered that the lower court vacate its restitution order and to hold a new restitution hearing.

This short article was written by Greg Hill. He is an experienced criminal defense attorney in Torrance, California. He handles juvenile offenses, as well as adult offenses, including burglary, DUI, domestic violence, drug offenses, and restraining order matters. He is a U.S. Naval Academy graduate (B.S., 1987), Boston University graduate (M.B.A., 1994) and Loyola Law School graduate (J.D., 1998). Greg Hill & Associates represents clients in Torrance, Long Beach and the surrounding areas. Visit the firm's website at http://www.greghillassociates.com or the firm's Facebook page at http://www.facebook.com/pages/greg-hill-associates/198954460153651.