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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**DOUGLAS S.,**

**Defendant and Appellant.**

**A133683**

**(Contra Costa County  
Super. Ct. No. J10-00617)**

Appellant Douglas S.<sup>1</sup> appeals from a restitution order of the juvenile court, contending it abused its discretion in ordering him to pay more than \$33,000 to the victim injured during his commission of second-degree robbery. We reject his contention and affirm.

**FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

On April 16, 2010, appellant and a friend approached the victim and arranged to buy marijuana from him. They later met the victim, received the marijuana, and, without paying for it, drove away in a truck. The victim attempted to hold on to the truck and

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<sup>1</sup> Because appellant is a minor, we refer to him by his first name and last initial to protect his identity in this proceeding. (Cal. Rules of Court, rule 8.401(a)(2).)

<sup>2</sup> Since there was no trial in this case, the facts are described as stated in the probation report.

recover his marijuana, but appellant pushed and punched him. The victim fell and was run over by the truck. He was transported by ambulance to John Muir Medical Center (John Muir) for treatment. As a result of the incident, the victim suffered a broken sternum, collarbone, and shoulder blade. On or about April 18, 2010, appellant was arrested, admitted his crime, and said he was under the influence of cocaine at the time of the offense.

On April 23, 2010, a wardship petition was filed under Welfare and Institutions Code section 602, subdivision (a), alleging appellant committed second degree robbery resulting in serious bodily injury (Pen. Code, §§ 211, 212.5, subd. (c), 12022.7). Appellant entered a no contest plea to second degree robbery, and, in exchange for the plea, the juvenile court dismissed the serious bodily injury enhancement. From June 2010 to March 2011, appellant attended and completed a rehabilitation program in Utah to address his substance abuse and behavioral issues. On April 25, 2011, the juvenile court adjudged appellant a ward of the court and placed him on probation with various conditions.

At a contested restitution hearing on October 21, 2011, the prosecution submitted a notice of determination of amount of restitution and a restitution request form completed by the victim's father, which showed that the victim paid \$67.30 in copayments to his health insurer, Kaiser Permanente (Kaiser). Appellant submitted a billing statement from John Muir to Kaiser for \$31,771.12, which showed the victim paid "\$0," and an explanation of benefits from Kaiser indicating the victim had no obligation to pay the \$1,695.89 billed for ambulance transportation following the robbery. The juvenile court ordered appellant to pay \$33,534.41 in restitution to the victim and found appellants' parents and "any co-responsible" jointly and severally liable. Appellant filed a timely notice of appeal from the order of restitution.

#### DISCUSSION

Appellant contends the juvenile court abused its discretion by setting a restitution amount based primarily on the costs billed by the victim's medical care provider rather than the economic losses suffered by the victim. "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." (Welf. & Inst. Code, § 730.6, subd. (a)(1).) As applicable here, "Restitution . . . 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 restitution order] 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 . . . including all of the following: [¶] . . . [¶] (2) Medical expenses . . . ." (Welf. & Inst. Code, § 730.6, subd. (h).)

We review the amount of restitution ordered under the abuse of discretion standard. (*People v. Fortune* (2005) 129 Cal.App.4th 790, 794.) "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. [Citation.]" (*People v. Dalvito* (1997) 56 Cal.App.4th 557, 562.) " 'If the circumstances reasonably justify the [trial court's] findings,' the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] [The reviewing court does] not reweigh or reinterpret the evidence; rather [it] determine[s] whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citation.]" (*People v. Baker* (2005) 126 Cal.App.4th 463, 469.)

"The purpose of an order for victim restitution is three-fold, to rehabilitate the defendant, deter future delinquent behavior, and make the victim whole by compensating him for his economic losses. [Citation.]" (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1017.) "[T]he Legislature intended to require a probationary offender, for rehabilitative and deterrent purposes, to make full restitution for all losses his crime had caused, and that such reparation should go entirely to the individual or entity the offender had directly wronged, regardless of that victim's reimbursement from other sources." (*People v. Birkett* (1999) 21 Cal.4th 226, 246 (*Birkett*), italics omitted.) Thus, the

juvenile court is within its discretion to order restitution, even if the victim has been or will be reimbursed for his bills by a third party.

Appellant contends the juvenile court abused its discretion by awarding restitution based primarily on medical expenses that were *billed* by the victim's medical provider rather than the amount of medical expenses actually *paid* by the victim and/or his insurer. He claims the John Muir bill and Kaiser benefits statement do not prove economic loss to the victim in the absence of any proof of payment. (*People v. Millard* (2009) 175 Cal.App.4th 7, 27.) We disagree. "Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant's criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim. [Citation.] The defendant has the burden of rebutting the victim's statement of losses . . . ." (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543 (*Gemelli*)). In the contested restitution hearing, the juvenile court had before it the notice of determination of amount of restitution and a restitution request form completed by the victim's father, as well as a bill from John Muir to Kaiser and a statement of the costs of the ambulance service. Although this evidence establishes no out-of-pocket loss to the victim, it is sufficient to establish a prima facie showing of substantial economic loss. (*People v. Foster* (1993) 14 Cal.App.4th 939, 946-948, superseded by statute on other grounds as stated in *Birkett, supra*, 21 Cal.4th at pp. 238-245.) Thus, the burden fell on appellant to prove that neither Kaiser nor the victim paid the bill in full or in part, and appellant did not do so.

Appellant argues that the burden of proving the victim's economic loss was improperly shifted to him. He relies on *People v. Giordano* (2007) 42 Cal.4th 644 (*Giordano*), which held, "The burden is on the party seeking restitution to provide an adequate factual basis for the claim." (*Id.* at p. 664.) The evidence before the court provided an "adequate factual basis" for the restitution order, as *Giordano* requires. (See *Gemelli, supra*, 161 Cal.App.4th at p. 1543.) Once this evidence was presented, it was up to appellant to rebut it, which he failed to do. Thus, by ordering the restitution in full, the trial court did not abuse its discretion.

DISPOSITION

The judgment is affirmed.

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SIMONS, J.

We concur.

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JONES, P.J.

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BRUNIERS, J.