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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.S.,

Defendant and Appellant.

A134888, A135570

(Alameda County  
Super. Ct. No. SJ09013135)

D.S. (appellant), born in October 1995, appeals from the juvenile court’s disposition order committing him to the Department of Juvenile Facilities (DJF) after appellant admitted he assaulted the victim (Pen. Code, § 245, subd. (a)(2)<sup>1</sup>) and personally used a firearm (§ 12022.5, subd. (a)). He also appeals from the court’s restitution order requiring him to pay \$2,000 to the Victim Compensation and Government Claims board.<sup>2</sup> He contends: (1) the court abused its discretion by ordering him committed to the DJF, and (2) there was insufficient evidence to support the restitution order. We reject the contentions and affirm the orders.

<sup>1</sup> All other statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> Appellant filed two appeals—one from the disposition order (A134888) and one from the restitution order (A135570). On the court’s own motion, we consolidate the appeals for purposes of decision.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Prior juvenile proceedings***

On July 29, 2009, an original juvenile petition was filed alleging appellant committed felony auto theft (Veh. Code, § 10851, count one) and left the scene of an accident, a misdemeanor (Veh. Code, § 20002, subd. (a), count two). The petition was later amended to allege in count one that the violation was receipt of stolen property (§ 496). Appellant admitted count one, and count two was dismissed with facts and restitution open.

While disposition was pending on the original petition, a subsequent petition was filed October 2, 2009, alleging appellant committed attempted robbery (§ 644/211, count one) and resisted arrest, a misdemeanor (§ 148, subd. (a), count two). It was further alleged as to count one that appellant had personally used a dangerous weapon, a BB gun (§ 12022, subd. (b)(1)). The subsequent petition was later amended to change count one to a charge of exhibition of a firearm in a public place (§ 417, subd. (a)(1)). Appellant admitted count one; the enhancement to count one and count two were dismissed with facts and restitution left open. The court placed appellant on probation, ordered him to perform 40 hours of community service, and set a restitution fine at \$125.

On March 23, 2010, a subsequent petition was filed alleging appellant stole a vehicle (Veh. Code, § 10851, count one), received stolen property (§ 496, count two), and drove without a license, a misdemeanor (Veh. Code, § 12500, subd. (a), count three). Appellant admitted count three and the remaining counts were dismissed. The court continued the probation orders.

On June 9, 2010, another petition was filed in which it was alleged that appellant had left his home on April 30, 2010, and that his whereabouts were unknown. The court issued a bench warrant for appellant's arrest.

### ***The current petition***

On July 19, 2010, a subsequent petition—which is the subject of this appeal—was filed and amended on September 7, 2011, alleging that appellant committed attempted premeditated murder (§§ 187/664, count one) and assault with a firearm (§ 245,

subd. (a)(2), count two). The petition alleged as to both counts that appellant intentionally and personally discharged a firearm and caused great bodily injury (§§ 12022.53, subd. (d)) and personally used a firearm (§ 12022.5, subd. (a)).

The petition was based on an incident that occurred at about 7:00 p.m. on July 6, 2010. According to a police report, then 14-year-old appellant, accompanied by 15-year-old M.M., approached the victim, D.J., on the corner of East 14th Street and 159th Avenue in Oakland, near a Walgreens store. Appellant “immediately g[ot] face to face with [D.J.]” and there appeared to be “some type of confrontation” between them. An onlooker or two tried to separate appellant and D.J. twice but, after walking away from D.J. and returning both times, appellant “g[ot] face to face with [D.J.] for a third time.” Appellant then took out a handgun, pointed the gun at D.J., and - from a distance of only a few feet - fired the gun once. D.J. immediately “hunch[e]d over at the waist” and began to retreat, then started to limp away across the street. Appellant advanced towards D.J., extended the gun in his right hand towards D.J., and fired the gun three more times in succession. D.J. continued running across the street and appellant advanced towards him again, extended the gun in his right hand in the direction of D.J., and fired the gun four more times. Several vehicles stopped in order to avoid being struck by the gunfire. Appellant fired one last round, after which he and M.M. fled the scene on foot. The entire incident was recorded on Walgreens surveillance cameras.

A witness who lived near the location of the shooting reported to police that appellant and M.M. came to her house that evening and told her, “We did something.” The witness knew appellant and M.M. because they were members of Burger Team, a gang to which the witness’s son also belonged. Appellant and M.M. asked the witness if they could use her phone; the witness refused and told appellant and M.M. to get out of her house. The next day, police conducted a follow-up interview of the witness who positively identified appellant and M.M. in separate photo line-ups as the individuals who had come to her home the night of the shooting. The witness also reported that her son had a telephone conversation with appellant and that, according to her son, appellant said, “Yah, I shot that Dipset nigger.”

Police interviewed D.J.'s mother, who said that D.J. associated with a gang known as Dipset, which was having problems with a gang from which the Burger Team gang had branched off. During a follow-up interview, D.J.'s mother positively identified appellant and M.M. in separate photo lineups. She stated that appellant, M.M., and four other individuals had come to her house approximately one month before the incident looking for her son, D.J. Appellant and M.M. were armed with handguns and M.M. threatened to "pop" D.J. when he saw him again. Before leaving D.J.'s mother's house, appellant and M.M. said they were "with the 'Burger Gang.' "

Police also interviewed D.J., who was treated at the hospital for a "through and through" gunshot wound to his forearm. D.J. initially claimed he did not know the two suspects and asked that they not be prosecuted. When police told D.J. that everything had been captured on video surveillance, D.J. said he wished to "be honest about what happened." He stated that appellant and M.M. approached him on the street and asked if he or his "partners" had a problem with appellant and M.M. D.J. responded, "No." After a brief confrontation, appellant shot D.J. once in the wrist. D.J. ran across the street as appellant continued firing at him. D.J. said he was aware appellant and M.M. belonged to the Burger Team gang. He also reported that appellant was known on the street as "clapshit" because he was known for shooting at people. During a follow-up interview, D.J. positively identified appellant as the shooter and M.M. as the second suspect but refused to circle their photographs or sign the photo line-up for fear of being labeled a "snitch."

Photographs copied from Myspace.com showed appellant and M.M. holding semiautomatic handguns and gesturing gang signs. One photograph of appellant and M.M. was entitled "Burgergang/187 homicide."

On July 16, 2010, police located appellant and M.M. Officers immediately took M.M. into custody and arrested appellant after a brief foot chase. During an interview with police, M.M. provided a description of the events that was generally consistent with what the surveillance video had recorded. He also admitted he, appellant, and several other Burger Team members had gone to D.J.'s mother's house approximately one month

prior to the shooting looking for D.J. He acknowledged that he, appellant, and another individual brandished handguns and made threats at that time. He also reported that Burger Team members were upset at D.J. for leaving Burger Team and joining the Dipset gang. During appellant's interview with police, appellant waived his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436) and admitted he shot D.J. Appellant believed he fired a total of seven shots during the incident and said he "was trying to 'hit' [D.J.]" as he repeatedly fired his gun at the fleeing victim.

On July 19, 2010, the district attorney's office filed a motion to have appellant declared unfit for adjudication in juvenile court (Welf. & Inst. Code, § 707, subds. (b) & (c)). On August 26, 2010, proceedings were suspended while appellant's competency was evaluated. After a hearing on the issue of competency, the juvenile court found appellant was competent and reinstated the proceedings.

On September 19, 2011, appellant admitted he committed assault with a deadly weapon (§ 245, subd. (a)(2), count two) and personally used a firearm (§ 12022.5, subd. (a)). In exchange for his plea, the prosecution agreed to withdraw the fitness petition and the juvenile court dismissed count one, the remaining enhancements, a separate six-count petition, and a pending probation violation. On March 2, 2012, after a contested disposition hearing, the juvenile court ordered appellant committed to the DJF and set the maximum term of confinement at 15 years, four months.

#### ***The restitution order***

On April 27, 2012, the district attorney's office filed a request for order of restitution. According to the request, the Victim Compensation and Government Claims Board (VCB) had provided services to and had paid \$2,000 on "behalf of the above mentioned victim(s)." Attached to the request was a document from VCB stating it had paid \$2,000 in relocation costs. In the section labeled "Victim's/Claimant's Name," the form stated: "Minor." At the restitution hearing, the court noted that it was aware of the "incredibly strict statutory requirements" that VCB follows when approving payments and that it was therefore inclined to approve an expense that VCB claimed it incurred. The prosecutor stated there were forms in her office showing \$2,000 had been paid and

that she would file the forms with the court and provide defense counsel with a copy. Defense counsel stated that his “only concern” was that he was “unsure about who the moving expenses are for,” as the victim in the case was in state prison. The court suggested it could have been for “initial emergency expenses” and stated, “If I get a document that says [VCB] paid out this money, I’m very comfortable with how strictly that’s been reviewed.” Defense counsel stated he understood the court’s intent but that he was objecting because the claim form identified the claimant simply as “Minor.” Counsel said, “I’m not sure who that is or how that fits into this case.” The prosecutor suggested that “Minor” referred to D.J. because D.J. was a minor at the time of the incident. The court stated, “I’m going to order the \$2,000 per the request. . . . But like any order of restitution, we can revisit it on the next court date and we have further documentation. And if it requires me to either raise it or lower it, I’ll certainly be open for that.” The court stated it would revisit the restitution issue at a hearing on May 11, 2012. On May 11, 2012, the court reaffirmed its restitution order without objection.

## **DISCUSSION**

### ***DJF commitment***

Appellant contends the juvenile court abused its discretion in committing him to the DJF. We disagree.

When determining the appropriate disposition in a delinquency proceeding, the juvenile court is required to consider, “in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (Welf. & Inst. Code, § 725.5.) “Additionally, there must be evidence in the record demonstrating both a probable benefit to the minor by a [DJF] commitment and the inappropriateness or ineffectiveness of less restrictive alternatives.’ [Citation.]” (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 485.) In determining whether a DJF commitment would be of probable benefit to the minor, the court may also consider “punishment as a rehabilitative tool.” (Welf. & Inst. Code, § 202; see also *In re Jimmy P.* (1996) 50 Cal.App.4th 1679,

1684 [the court focuses on the need for public protection as well as the minor’s best interests].)

The juvenile court has broad discretion in determining the appropriate rehabilitative and punitive measures for offenders. (Welf. & Inst. Code, § 202; *In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) “A juvenile court’s commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.]” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329.) “It is not the responsibility of [the reviewing court] to determine what [it] believe[s] would be the most appropriate placement for a minor. This is the duty of the trial court, whose determination [the court] reverse[s] only if it has acted beyond the scope of reason.” (*In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) An appellate court will not substitute its judgment for that of the juvenile court, but rather must indulge all reasonable inferences in favor of the decision and affirm the decision if it is supported by substantial evidence. (*In re Asean D., supra*, 14 Cal.App.4th at p. 473.)

Here, the juvenile court reviewed the probation department’s disposition report, which noted that appellant had been rejected by the Regional Center because none of their group homes were “locked facilities” and would therefore not “suit [appellant’s] needs or the court’s requirements.” Probation recommended that appellant be placed at George Jr. Republic (George Jr.) in Pennsylvania and explained why various other placement options were not appropriate for appellant. For example, probation stated it could not recommend Camp Sweeney because it is not secure and cannot address appellant’s low-cognitive functioning.<sup>3</sup> Probation stated that in contrast, George Jr. “can address [appellant’s] low cognitive functioning while at the same time offering behavior modification.” An informational packet from George Jr. was attached to the report. Probation stated it was not recommending DJF because appellant was 14 years old when he committed the crime, was of “fairly low cognitive functioning,” and had been a

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<sup>3</sup> There was evidence presented at a competency hearing that appellant had limitations and learning problems and some emotional issues that made it difficult for him to understand and process information.

“model student” in juvenile hall. Based on probation’s decision not to recommend DJF, the prosecutor provided the court with an informational packet from DJF explaining its intake and evaluation procedures, educational services, including independent educational plans and special education services, gang intervention program, mental health treatment program, mission statement, and other programs relevant to appellant’s specific needs and mental competence issues.

At a March 2, 2012 disposition hearing, the prosecutor stated she was not aware of any other youth from Alameda County who had been placed at George Jr. and also noted that while probation had focused on appellant’s need for secure housing, George Jr. had an “open campus.” The prosecutor argued that the only difference between George Jr. and DJF was “the price tag” because the cost of sending appellant to George Jr. would approach \$10,000 per month including fees and transportation costs. The prosecutor also pointed out that the DJF informational packet contained “seven different program sheets” ranging from intake to the educational and mental health components, including cognitive behavior therapy.

Defense counsel acknowledged that George Jr. “seems to offer the same programs or similar programs as is indicated by [DJF].” Counsel nevertheless asked the court to send appellant to George Jr., Rite of Passage, or a similar placement—but not DJF. The probation officer acknowledged that no one from Alameda County had been placed at George Jr. and stated he had no information about credentials or other qualifications of staff at George Jr. The probation officer also stated there was nothing that George Jr. would “be able to add that would be different or in addition to what other normal placements would provide.”

The juvenile court summarized appellant’s criminal history—the admitted felony assault with firearm and arming enhancement, a prior felony possession of stolen property and auto theft, two prior counts of displaying a deadly and dangerous weapon, an unlicensed driving, with a hit and run, and numerous probation violations, including absconding and cutting off his GPS monitor. The court considered letters from appellant’s family. The court stated that the “gravity of the offense [was] monstrous” and

noted it had reviewed the videotape of the offense, which “reveal[ed] a very busy intersection filled with children and adults walking, in cars, buses, and businesses,” and appellant shooting at the victim “at close range” and “continuing to fire at the victim with no regard for anyone else that he may have shot and injured.” The court stated it had reviewed photographs of appellant on an “official Murder Team Web page showing [appellant] proudly holding up a semiautomatic handgun flashing apparent gang signs with others.” The court stated it had considered alternative placements, including Regional Center, Fred Finch home, Family Preservation Unit, and Harrison Homes, and explained why each of these options was not appropriate. The court further stated, “With regards to [appellant’s] learning disability, . . . [DJF] has extensive facilities, extensive programs. Their evaluation is exhausting at every level. And [appellant] has—per the Guidance Clinic— . . . a specific learning disability . . . in writing and the area of written expression. . . . There’s nothing to indicate . . . that the [DJF] would not be able to address the issues that he has.” The court ordered appellant to be committed to the DJF, stating that his “mental and physical condition and qualifications are such as to render [it] probable that he will be benefited by the reformatory educational discipline or other treatments provided by the [DJF].”

Appellant does not dispute the court’s findings regarding the gravity of the present offense and his extensive criminal history. Rather, he challenges the commitment order on the ground that the juvenile court “could not, on this record, find that [DJF] had the intensive programs required to treat [him].” He asserts the court simply “committed him to [DJF] because of the failure of probation to identify a program to meet [his] needs.” The detailed record of the disposition hearing, however, establishes that there was overwhelming evidence supporting the court’s determination that appellant’s rehabilitation would probably be most benefitted by the reformatory and educational programs and the secure environment that DJF offered. The court’s commitment order included specific findings of probable benefit from sending appellant to DJF, i.e., its “extensive facilities, extensive programs,” its “exhaustive” evaluations at every level, and its ability to address appellant’s “specific learning disability.” The court also found that

DJF would be able to focus on appellant's learning disabilities and prescribe "psychotropic medications" where necessary and appropriate. The court further detailed why other, less restrictive alternatives were not appropriate in appellant's case. We conclude there is ample evidence in the record supporting the juvenile court's DJF commitment order.

### ***Restitution order***

Appellant contends there was insufficient evidence supporting the restitution order. We disagree.

Welfare and Institutions Code 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." The purposes of victim restitution are to compensate victims for their losses as well as to rehabilitate and deter offenders. (*In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1387.) "The Legislature very clearly intended 'that a victim of crime who incurs *any economic loss* as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.' [Citation.]" (*People v. Giordano* (2007) 42 Cal.4th 644, 659, original italics.)

"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 further delinquent behavior." (*In re Tommy A.* (2005) 131 Cal.App.4th 1580, 1587.) To those ends, "restitution statutes are to be interpreted broadly and liberally. [Citation.] Any interpretation that limits a victim's rights to restitution 'would be in derogation of . . . [the Legislature's intent].'" (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132-1133.) A trial court's order for restitution will not be overturned unless it constitutes an abuse of discretion. (*People v. Fortune* (2005) 129 Cal.App.4th 790, 794.) "When there is a factual and rational basis for the amount of restitution ordered . . . no abuse of discretion will be found by the reviewing court." (*In re Johnny M., supra*, 100 Cal.App.4th at p. 1132.)

Appellant argues the restitution order must be reversed because “there was *no* evidence as to *who* the restitution was paid and how it related to appellant’s criminal conduct.” The record shows, however, that the juvenile court received an invoice from VCB showing it had paid \$2,000 in relocation costs on behalf of the “victim/claimant” identified as “Minor.” The trial court could reasonably determine from this information that VCB incurred the costs on behalf of D.J., who was the victim in this case and a minor at the time of the incident. The court could also reasonably determine that VCB paid the relocation costs as a result of appellant’s acts, which included arming himself with a handgun and going to D.J.’s mother’s house looking for D.J., threatening to shoot D.J., and actually shooting at him multiple times for leaving the Burger Gang to join a rival gang. (See *People v. Mearns* (2002) 97 Cal.App.4th 493, 502 [\$13,575 victim restitution for relocation costs was reasonable where a rape victim relocated “out of a reaction to [the defendant’s] criminal act”].) Because there was a factual and rational basis for the amount of restitution ordered, we conclude there was no abuse of discretion.

**DISPOSITION**

The disposition and restitution orders are affirmed.

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McGuinness, P. J.

We concur:

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Siggins, J.

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Jenkins, J.