

Circuit Court for Baltimore City
Case Nos. 316355011 & 316355013

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 471

September Term, 2017

GERTRUDE JONES

v.

STATE OF MARYLAND, ET AL.

Eyler, Deborah S.,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: February 21, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal concerns restitution resulting from an incident in which appellee D.B., while fleeing the police in his car, struck and damaged a parked van owned by the victim, appellant Gertrude Jones (“Jones”).¹ Appellee, who was seventeen years old at the time, appeared before a magistrate of the Circuit Court for Baltimore City for juvenile delinquency proceedings and was adjudicated delinquent of: (1) failing to attempt to locate the owner of an unattended vehicle after being involved in an accident; and (2) fleeing and eluding a police officer after being signaled to stop. Jones sought restitution for her insurance deductible as well as the cost of the vehicle she rented as a replacement for her damaged van.

Appellee paid Jones one hundred dollars representing restitution for the insurance deductible, but challenged the claimed rental vehicle costs. The circuit court, in an order adopting the findings of the magistrate, found that Jones rented the replacement vehicle because her son and grandsons needed transportation for work purposes. Accordingly, the court deemed the rental vehicle costs “contingent” expenses and declined to award restitution. Jones noted a timely appeal, and presents the following issue for our review:

Whether the trial court erred in concluding that the victim’s expense for a replacement vehicle was not a “direct result” of the delinquent acts that destroyed her vehicle?

¹ Md. Code (2001, 2008 Repl. Vol., 2017 Supp.) § 11-103(b) of the Criminal Procedure Article expressly authorizes Jones, as a victim of a crime, to maintain her appeal in this case.

We conclude that the *damage* to Jones's vehicle was a direct result of appellee's delinquent act of fleeing and eluding the police; however, we hold that the *rental costs* to provide Jones's family members a replacement vehicle do not constitute a "direct out-of-pocket loss" incurred as a direct result of appellee's delinquent act, and therefore are not recoverable as restitution. Accordingly, we shall affirm the circuit court's decision.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 1:05 a.m. on December 17, 2016, an officer in a marked patrol vehicle observed appellee driving a Buick LeSabre with a broken headlight and brake light on Belair Road in Baltimore City. The officer activated his emergency lights and equipment and attempted to stop the Buick. Evading the officer, appellee made several turns and struck another police car before finally crashing into Jones's parked van.

Appellee, age seventeen at the time of the incident, was charged in two juvenile petitions with a total of thirteen counts. Petition No. 316355011 charged appellee with three counts related to his collision with the police car.² Petition No. 316355013 dealt with the remainder of the incident, and charged appellee with the following ten counts: (1) failing to attempt to locate the owner of an unattended vehicle after being involved in an accident; (2) fleeing and eluding a police officer after being signaled to stop; (3) driving in wanton and willful disregard for the safety of persons and property; (4) negligent driving; (5) driving without a license; (6) speeding; (7) driving on the sidewalk; (8) equipment

² Those charges are not relevant to this appeal.

violation – broken headlight; (9) equipment violation – broken tail light; and (10) driving an unregistered vehicle.

On March 6, 2017, appellee appeared before a magistrate of the Circuit Court for Baltimore City, sitting as a Juvenile Court, and admitted involvement in the first two counts of Petition No. 316355013: (1) failing to attempt to locate the owner of an unattended vehicle after being involved in an accident; and (2) fleeing and eluding a police officer after being signaled to stop. In exchange, the State nolle prossed the remaining counts in both petitions.

Jones, the owner of the parked van appellee struck, requested reimbursement of out-of-pocket expenses she incurred as a result of the destruction of her van, namely a \$100 insurance deductible and \$562.44 in rental vehicle costs. Jones testified that her son and grandsons used the van for work, requiring her to rent another vehicle for their use until the destroyed van could be replaced. Specifically, Jones indicated that her son was “doing carpet” and, because of the loss of the van, her “grandsons [were] not able to go to work . . . because they were helpers” for her son. The photographs admitted into evidence demonstrated that the damaged vehicle was a full-size white cargo van with no windows in the cabin behind the driver’s and front passenger’s seats.

Appellee agreed to reimburse Jones for the \$100 insurance deductible, but argued that the court lacked authority to order restitution for the cost of the rental vehicle. Noting that restitution is only available for direct out-of-pocket costs incurred as a direct result of a delinquent act, appellee argued that the rental vehicle costs were not a direct result of the

incident, and were therefore not subject to restitution. The State argued that appellee's conduct on the night of the incident caused damage to Jones's van and that Jones's rental costs were a direct result of the property damage caused by appellee.

On March 20, 2017, the magistrate issued written findings and recommendations. The magistrate found that the damaged van had been used by Jones's son and grandson³ for work purposes, and recommended that restitution for the rental vehicle costs be denied, concluding that the costs were "contingent" expenses, rather than a direct out-of-pocket loss. The circuit court adopted the magistrate's recommendations, and Jones timely noted an appeal.

STANDARD OF REVIEW

"We ordinarily apply the abuse of discretion standard in reviewing a trial court's order of restitution." *In re Cody H.*, 452 Md. 169, 181 (2017) (citing *Silver v. State*, 420 Md. 415, 427 (2011)). When a trial court's restitution order involves an interpretation and application of Maryland statutes and case law, we must determine whether the court's conclusions are legally correct under a *de novo* standard of review. *Griffin v. Lindsey*, 444 Md. 278, 285 (2015) (citing *Walter v. Gunter*, 367 Md. 386, 392 (2002)). "We will not disturb the judgment on the facts, however, unless the trial court's findings are clearly erroneous." *Goff v. State*, 387 Md. 327, 338 (2005).

³ The magistrate referred to Jones's "grandson," but Jones testified that her "grandsons" used her van.

DISCUSSION

We have previously noted that restitution under the Criminal Procedure Article is a criminal sanction, as opposed to a civil remedy, and that restitution serves at least three distinct purposes: “First, it is a form of punishment for criminal conduct. Second, it is intended to rehabilitate the defendant. Lastly, it affords the aggrieved victim recompense for monetary loss.” *McCrimmon v. State*, 225 Md. App. 301, 307 (2015) (citing *Pete v. State*, 384 Md. 47, 55 (2004)). “The objectives of restitution do not include that the victim must be made whole by the full reimbursement of the victim’s loss, but they do not preclude that possibility if the defendant has the ability to pay.” *McDaniel v. State*, 205 Md. App. 551, 558 (2012) (quoting *Anne Arundel Cty. v. Hartford Accident & Indem. Co.*, 329 Md. 677, 685-86 (1993)).

Here, Jones sought restitution for her rental vehicle costs pursuant to Md. Code (2001, 2008 Repl. Vol., 2017 Supp.) § 11-603 of the Criminal Procedure Article (“CP”). This section presumes that victims have a right to restitution if: “(1) the victim or the State requests restitution; and (2) the court is presented with competent evidence of any item listed in subsection (a) of this section.” CP § 11-603(b). Under CP § 11-603(a), the victim of a crime or delinquent act may obtain a judgment of restitution if:

- (1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- (2) *as a direct result of the crime or delinquent act, the victim suffered:*
 - (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses;
 - (ii) *direct out-of-pocket loss;*

- (iii) loss of earnings; or
- (iv) expenses incurred with rehabilitation[.]

(Emphasis added).

Jones argues that her rental vehicle costs are recoverable under CP § 11-603(a)(2)(ii), because she personally paid for the rental vehicle, and because she needed to rent a vehicle as a direct result of appellee’s delinquent act that destroyed her van. The State, which also filed a brief in this appeal, supports Jones’s position for the same reasons.

Appellee argues that Jones is not entitled to restitution for two reasons. First, appellee posits that the damage to Jones’s van was not a direct result of his adjudicated delinquent acts. Second, appellee argues that Jones’s rental costs were not a direct result of the damage to her van, and contends that awarding Jones restitution to rent a vehicle for her family members would expand the group of persons entitled to restitution beyond that intended by the legislature.

We disagree with appellee’s first contention and conclude that the damage to Jones’s van was, under CP § 11-603(a)(1) and (a)(2), a “direct result” of appellee’s delinquent act of fleeing from police. Based on the circumstances in this case, however, we hold that Jones’s rental costs do not qualify as a “direct out-of-pocket loss” as prescribed by CP § 11-603(a)(2)(ii). We explain.

Definition of “Direct” Under CP § 11-603(a)

The definition section of the restitution statute does not provide a definition for “direct” or “direct result.” When statutory definitions are not provided, “we determine the intended scope of the term by applying the language’s natural and ordinary meaning, by

considering the express and implied purpose of the statute, and by employing basic principles of common sense, the meaning those words intend to convey.” *Goff*, 387 Md. at 344 (quoting *Schmerling v. Injured Workers’ Ins. Fund*, 368 Md. 434, 444 (2002)). The Court of Appeals has previously addressed the meaning of “direct result” in the context of CP § 11-603 by noting that, “‘Direct’ is defined as ‘stemming immediately from a source, [as in direct] result . . . proceeding from one point to another in time or space without deviation or interruption . . . marked by absence of an intervening agency, instrumentality or influence.’” *Id.* at 344 n.9 (quoting Merriam-Webster’s Collegiate Dictionary 327 (10th ed. 2001)).

In *Goff*, Goff forced his way into the victim’s apartment and assaulted him. *Id.* at 332. Goff and the victim ended up in the victim’s bathroom, where Goff broke the shower in the course of the assault. *Id.* at 333. On appeal, Goff argued that his assault of the victim did not directly result in damage to the victim’s shower. *Id.* at 343-44. The Court of Appeals disagreed, focusing on Goff’s conduct rather than the elements of assault. The Court concluded that “[i]t is clear that Mr. Goff damaged the shower during and because of the assault on [the victim]. No intervening agent or occurrence caused the damage.” *Id.* at 344. The Court determined that for the purposes of the restitution statute, the damage to the victim’s shower was a direct result of Goff’s assault conviction. *Id.*; see also *State v. Stachowski*, 440 Md. 504, 513 (“Our cases are clear that restitution may be compelled only where the injury results from the actions that made the defendant’s conduct criminal.”).

Damage to Jones's Van was a "Direct Result" of Appellee Fleeing Police

Addressing appellee's first contention, we have no difficulty concluding that the damage to Jones's van was a "direct result" of appellee's delinquent act of fleeing from the police. The record shows that appellee crashed into Jones's parked van while he was attempting to elude police. No intervening agent or occurrence caused the damage to Jones's van. Under *Goff*, the damage to Jones's van was a direct result of appellee's delinquent act of fleeing from the police. *See also In re Jason W.*, 94 Md. App. 731, 737 (1993) (implying that "eluding an officer" could satisfy the required nexus between the delinquent act and damage to a police cruiser during chase). We also note that, by agreeing to pay Jones's insurance deductible, appellee implicitly recognized that the damage to Jones's van resulted from his delinquent conduct.

Jones's Rental Costs Were Not a "Direct Out-of-Pocket Loss"

While the *damage* to Jones's van was clearly the direct result of appellee's delinquent act as required by CP § 11-603(a)(1), we conclude that the *rental costs* Jones incurred for the benefit of her son and grandsons do not qualify as her direct out-of-pocket loss under CP § 11-603(a)(2)(ii). As stated *supra*, CP § 11-603(a)(2)(ii) permits restitution when "as a direct result of the crime or delinquent act, the victim suffered . . . *direct out-of-pocket loss.*" (Emphasis added).

A brief review of the case law construing CP § 11-603(a)(2) is useful in determining the types of losses the statute is intended to cover.⁴ In *Williams v. State*, 385 Md. 50 (2005), Williams pleaded guilty to the theft of four motorcycles. *Id.* at 51-52. Because three of the motorcycles were not titled, they were towed to the Baltimore City impound lot. *Id.* at 52. The authorities at the impound lot “rebuffed [the victim’s] attempt to repossess the motorcycles because he could not offer sufficient evidence of his ownership of the vehicles.” *Id.* at 55. As a result, the victim sought \$1500, which the circuit court ordered Williams to pay as restitution. *Id.* at 54.

The Court of Appeals vacated the circuit court’s restitution order. In doing so, the Court construed CP § 11-603(a)(1) and (a)(2), and held that the victim’s “inability to reclaim the undamaged motorcycles was not the direct result of Williams’s theft of them.” *Id.* at 62. The Court stated,

While there is undeniably a causal link between the theft in Baltimore County and the motorcycles ending up in the Baltimore City impoundment lot, that nexus does not partake of the directness required by the statute. Moreover, [the victim’s] failure to produce proof of ownership to secure release of the vehicles is in no way a direct result of their underlying theft.

⁴ We note that the magistrate’s recommendations, which were adopted by the court, cited to *In re Zephrin D.*, 69 Md. App. 755 (1987), for the proposition that rental car costs are not recoverable as restitution. However, in *In re Cody H.*, 452 Md. 169, 187 (2017), the Court of Appeals made clear that *Zephrin D.* had been superseded by statute as recognized in *In re Jason W.*, 94 Md. App. 731, 735 (1993). Moreover, the Court of Appeals noted the substantial changes to the restitution statute made by the General Assembly in 1997, declaring that “the purpose of the 1997 Act was to make victims’ rights laws, including our restitution statute, more expansive.” 452 Md. at 187. We need not address those statutory changes in detail. We merely point out that the circuit court here erred to the extent that it relied on *Zephrin D.*

Id. In *dicta*, the Court noted that the victim “may be able to mount a tort or other civil action against Williams where proof of causation of any alleged damages may be less stringent than in the criminal statute governing restitution.” *Id.*

We also find guidance in cases construing other provisions of CP § 11-603(a)(2). In *Cody H.*, the Court of Appeals held that, under CP § 11-603(a)(2)(iii), a victim could recover earnings he lost as a result of his inability to work due to injuries sustained during an assault. 452 Md. at 195. On the other hand, in *Wiredu v. State*, 222 Md. App. 212 (2015), we recognized a distinction, for restitution purposes, between losses sustained by a victim and losses sustained by others. There, the victim sustained severe injuries as a result of a motor vehicle accident caused by Wiredu. *Id.* at 215-16. The circuit court awarded restitution that included the victim’s wife’s lost wages incurred as a result of her having to take off work to care for her husband. *Id.* at 216. We reversed, holding that although CP § 11-603(a)(2)(iii) authorizes the circuit court to award restitution for a victim’s loss of earnings, it “does not authorize a circuit court to award restitution for the lost earnings of others.” *Id.* at 229. Although *Cody H.* and *Wiredu* construed CP § 11-603(a)(2)(iii) rather than (a)(2)(ii), the cases reflect our courts’ restrictive interpretation of the statute.

We further note that our appellate courts have held that a victim’s creditors are generally not entitled to restitution. *McCrimmon*, 225 Md. App. at 309. In *McCrimmon*, the victim’s attorney-in-fact, McCrimmon, misappropriated funds that were meant to cover the victim’s nursing home expenses. *Id.* at 303-04. The circuit court ordered McCrimmon

to pay \$19,718.73 in restitution to Chapel Hill Nursing Home. *Id.* at 305. Though we acknowledged that “Chapel Hill is, in a general sense and possibly in common parlance, a victim of McCrimmon’s embezzlement[s],” *id.* at 309, we held that “the nursing home is not included in this statutory definition of ‘victim’ under the restitution laws.”⁵ *Id.* at 312.

With this case law as guidance, we turn to the present case, noting our appellate courts’ restrictive interpretation of CP § 11-603, which, as a penal statute, must be strictly construed. *Breakfield v. State*, 195 Md. App. 377, 402 (2010) (citing *Addison v. State*, 191 Md. App. 159, 180 (2010)).

Here, the court found that Jones’s van had been used by her son and grandsons, and that as a result of the damage to the van, they were unable to commute to work.⁶ The court further found that Jones rented a vehicle because “her family members could not purchase a new vehicle.” These fact findings are not clearly erroneous.

While there is undeniably a causal link between the damage to Jones’s van and Jones’s subsequent decision to rent a vehicle for her family members’ use, we hold that the cost of the rental vehicle is not a direct out-of-pocket loss suffered by the victim, Jones, as required by the restitution statute. The court found that Jones’s son and grandsons used the van to get to work. They, not Jones, were harmed by the immediate unavailability of

⁵ The term “victim” is defined by the restitution statute as “(1) a person who suffers death, personal injury, or property damage or loss as a direct result of a crime or delinquent act; or (2) if the person is deceased, the personal representative of the estate of the person.” CP § 11-601(j).

⁶ As stated *supra*, the trial court adopted the magistrate’s written recommendations and findings of fact.

Jones's van. By renting a vehicle for her family members' use for their work, Jones voluntarily incurred a loss so that her son and grandsons would not have to borrow, rent, or purchase a vehicle of their own. In essence, Jones rented the replacement van so that her family members would not sustain an economic loss. To compel appellee to make restitution in this case would operate to make appellee the insurer of the economic losses sustained by Jones's family members. In our view, such a result would not comport with our appellate courts' interpretation of the restitution statute. *Williams*, 385 Md. at 63. We therefore conclude that Jones's expense to rent a replacement vehicle for her family members' use does not qualify as a direct out-of-pocket loss suffered by a victim as prescribed by CP § 11-603(a)(2)(ii).⁷

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE CITY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**

⁷ We express no opinion whether a victim may recover rental vehicle expenses as restitution where there is evidence that the victim needed a replacement vehicle for the victim's employment or for other reasons personal to the victim.