Circuit Court for Baltimore City
Case No. 320261006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 643

September Term, 2021

IN RE: K.P.

Graeff,
Nazarian,
Eyler, Deborah, S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 21, 2022

The Circuit Court for Baltimore City, sitting as a juvenile court, found K.P., the appellant, involved in two delinquent acts: unauthorized use of a motor vehicle and leaving the scene of an accident. The court placed him on probation with conditions. After a subsequent hearing, the court entered a judgment of restitution for $1,000 against K.P. and his mother, Ms. P. K.P. noted this appeal, asking "[d]id the circuit court err in ordering restitution?" We shall reverse the restitution judgment.

FACTS AND PROCEEDINGS

On August 13, 2020, two Baltimore City Police detectives observed K.P. driving a 2014 Nissan Altima ("the Nissan") at the intersection of South Gilmor and McHenry Streets. He appeared to be too young to be legally operating a motor vehicle. In fact, he was 14 years old at the time. The officers checked the Nissan's tags and learned that it had been reported stolen on June 8, 2020.

Upon stopping the Nissan, one detective approached the driver's side, drew his firearm, and ordered K.P. to put the car in park and show his hands. When the detective attempted to open the driver's side door, K.P. put the car in reverse, sped backwards for about two blocks, and ran the Nissan into an unoccupied, parked vehicle. K.P. fled on foot but was quickly apprehended.

On September 17, 2020, K.P. was charged with fourteen delinquent acts, including vehicle theft, theft, unauthorized use, fleeing and eluding police officers, driving without a license, and leaving the scene of an accident. The State asserted its right to request restitution in an amount up to $10,000. *See* Md. Code (2001, 2018 Repl.

Vol.), § 11-604(b) of the Criminal Procedure Article ("CP") (setting $10,000 as the "absolute limit" for restitution for each child's acts arising out of a single incident.)

An adjudicatory hearing was held before a magistrate on December 4, 2020. The State proffered the facts stated above, which K.P. admitted, and that the Nissan was owned by Donnell Taylor, had been stolen from where it was parked outside his apartment, and that Mr. Taylor did not give K.P. permission to drive it. The magistrate found K.P. involved in two delinquent acts: 1) unauthorized use of a motor vehicle, which if committed by an adult, would constitute a violation of Md. Code (2002, 2021 Repl. Vol.), § 7-203 of the Criminal Law Article (CL),[1] and 2) leaving the scene of an accident, which if committed by an adult, would constitute a violation of Md. Code (1977, 2020 Repl. Vol.), § 20-105 of the Transportation Article ("TA").[2,3] The State dismissed the remaining twelve counts.

At a disposition hearing on January 6, 2021, the magistrate recommended that K.P. be found delinquent and placed on probation for nine months, until October 6, 2021,

[1] CL § 7-203(a) prohibits, among other things, the use of another person's motor vehicle without permission.

[2] TA § 20-105 requires the driver of a vehicle involved in a collision with an unattended vehicle to take steps to locate and notify the owner of the unattended vehicle. In this case, the unattended vehicle was the parked car K.P. drove the Nissan into. The owner of that car declined to seek restitution.

[3] The adjudication order erroneously stated that K.P. was found involved in the delinquent act of theft of an automobile. K.P.'s lawyer moved to correct the record to reflect that he was found involved in unauthorized use of a vehicle, not theft of an automobile. The motion was granted, and an amended adjudication order was entered superseding the prior order.

with conditions.[4] By order entered January 14, 2021, the juvenile court adopted the magistrate's recommendation.

Subsequently, the State alleged that K.P. violated his probation. On May 24, 2021, a violation of probation adjudicatory hearing was held. The presiding magistrate recommended a finding that K.P. had violated four conditions of his probation.[5] By order of June 1, 2021, the juvenile court adopted that recommendation.

On June 23, 2021, a combined violation of probation disposition hearing and restitution hearing was held before a magistrate. The magistrate granted the State's request to incorporate into the record the facts proffered at the adjudicatory hearing that K.P. had admitted.

Mr. Taylor appeared and testified. He stated that he owned the Nissan that K.P. was driving on August 13, 2020, and that it had been stolen from outside his apartment on June 8 or 9, 2020.[6] The following exchange occurred:

> [THE STATE]: Mr. Taylor, after your car was stolen, did you ever get it back?
>
> [MR. TAYLOR]: No.

[4] The issue of restitution had been scheduled to be heard at that hearing, but the juvenile court granted a request for a postponement of that matter by the State, which had been unable to contact Mr. Taylor due to a change in telephone phone number.

[5] K.P.'s violations were 1) not cooperating with directives from the Department of Juvenile Services; 2) missing his curfew; 3) not obeying the rules of his home; and 4) not participating in a mentorship program.

[6] As noted, the report of stolen vehicle was dated June 8, 2020. We shall use that date.

> [THE STATE]: Do you know why?
>
> [MR. TAYLOR]: It was paid off by insurance for whatever they would have payed [sic] off on it.
>
> [THE STATE]: And to your knowledge, why was your car paid off by your insurance as opposed to receiving the car back?
>
> [MR. TAYLOR]: Because it was over 30 days before the car was found, so it was written off as a total loss.

Mr. Taylor further testified that his insurance company determined that the total loss value for the stolen Nissan was $7,493.46, and that it paid him that sum. He still owed $4,737.97 on the loan he had taken to purchase the Nissan, however. Mr. Taylor explained that he needed a car for transportation to work and could not obtain financing to purchase another car until his outstanding car loan was paid off. For that reason, he was seeking $4,737.97 in restitution.[7]

On cross-examination, Mr. Taylor confirmed that the "only reason" the Nissan was "declared a total loss" was because it was not found within 30 days after being stolen. He testified that he had not seen the Nissan since it was stolen and was not informed about what happened to it after the events of August 13, 2020.

Ms. P. testified that she lives with K.P. and his four younger siblings. In 2017, she sustained a gunshot wound to the head, which rendered her unable to work. She receives

[7] Mr. Taylor did not have GAP insurance, which covers the difference, if any, between the value of a vehicle that has been totaled and the amount owed on the outstanding purchase loan for the vehicle.

$1,011 per month in Social Security Disability Insurance ("SSDI"), as well as food stamps. She does not receive child support from K.P.'s father; the father of her other children is deceased. K.P.'s grandmother occasionally provides money for Christmas presents or a haircut for him. Ms. P.'s monthly expenses include $995 for rent, $130 for electricity, $70 for water, $100 for a family cell phone plan, and $45 for internet service, totaling $1,340. Because her expenses exceed her income, she pays her rent and utilities every month but often has to skip payments on her cell phone plan and internet service, which sometimes causes them to be shut off. If she runs out of food, her sister helps her until she gets more food stamps. Ms. P. explained that because K.P. has large feet, his shoes cost between $150 and $200. She stated that K.P., who was 15 at the time of the restitution hearing, had never had a job.

At the end of the hearing, the magistrate found as follows: "Based on the facts sustained finding that [K.P.] caused damage to Mr. Taylor's car, the Court does find that as a direct result of [K.P.]'s delinquent act, the victim suffered direct out of pocket expenses and now has to pay for a vehicle that has no value." The magistrate further found that both K.P. and Ms. P. had "the ability to pay" restitution. The magistrate reasoned that K.P. had the ability "to work through some program, such as Youth Works, and therefore does have the ability to pay." She noted that if K.P. could afford to purchase "$150 to $200 shoes, then he can certainly remit payment to the victim in this case." The magistrate recommended that K.P.'s probation be extended until March 23,

2022, and that K.P. and Ms. P. be ordered to pay Mr. Taylor $1,000 in restitution by the end of that probationary period.

On July 1, 2021, the juvenile court entered an order adopting the magistrate's recommendation. This timely appeal followed. We shall include additional facts in our discussion of the issues.

STANDARD OF REVIEW

Our review of a juvenile court's decision to grant an order of restitution is governed by three varying standards. "First-level findings of fact are reviewed for clear error." *In re A.B.*, 230 Md. App. 528, 531 (2016). The ultimate decision to award restitution and the amount of restitution ordered are reviewed for abuse of discretion. *Id*.; *see also In re G.R.*, 463 Md. 207, 213 (2019) ("Generally, an appellate court reviews a circuit court's order of restitution for abuse of discretion.") (citations omitted). If the restitution order "involves an interpretation and application of Maryland statutory and case law," however, we review the juvenile court's decision de novo. *G.R.*, 463 Md. at 213 (cleaned up).

DISCUSSION

In a juvenile delinquency proceeding, the court may order restitution upon findings that satisfy CP § 11-603(a):

> A court may enter a judgment of restitution that orders a . . . child respondent to make restitution in addition to any other penalty for the commission of a . . . delinquent act, if:

> (1) *as a direct result of the . . . delinquent act*, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased; [or]
>
> (2) *as a direct result of the . . . delinquent act*, the victim suffered:
>
> *** * ***
>
> (ii) direct out-of-pocket loss[.]

(Emphasis added.) When a child is a defendant or child respondent and restitution is awarded, the judgment may be entered against the child, a parent of the child, or both. CP § 11-604(a). *See also* Md. Code (1973, 2020 Repl. Vol.), § 3-8A-28 of the Courts & Judicial Proceedings Article ("The court may enter a judgment of restitution against the parent of a child, the child, or both as provided under Title 11, Subtitle 6 of the Criminal Procedure Article.").

K.P. contends the juvenile court erred as a matter of law by ordering restitution, for two reasons. First, the sum Mr. Taylor still owed on his car loan ($4,737.97) was not a loss directly resulting from K.P.'s delinquent acts of unauthorized use of a vehicle or leaving the scene of an accident. Second, and alternatively, the court could not enter a judgment of $1,000 in restitution because the evidence established that neither he nor his mother had the ability to pay.

The State responds that the evidence was sufficient to establish that K.P.'s delinquent act of unauthorized use directly resulted in losses to Mr. Taylor. It asserts that after the loss occasioned by the theft of the Nissan, *i.e.*, that Mr. Taylor must keep paying an amount still owed on his car loan, although he has no car, Mr. Taylor "suffered an

additional loss": that the Nissan "was completely damaged and never returned to him." The State further responds that the juvenile court did not err by finding that K.P. and Ms. P. had the ability to pay $1,000 in restitution over a nine-month period.

CP section 11-603(a) "requires a direct causal connection between a juvenile's delinquent act and the actual expenses suffered by the victim as a condition to an award of restitution." *In re Delric H.*, 150 Md. App. 234, 248 (2003). This principle was addressed by this Court in *In re Levon A.*, 124 Md. App. 103 (1998), and by the Court of Appeals in *In re Levon A.*, 361 Md. 626 (2000).

Two boys were involved in the *Levon A.* case. The evidence showed that Antonio, age 15, stole a car by breaking a window, disabling a "Club" security device, and "popping" the ignition. As he was driving, he saw Levon, age 14, walking home from school and offered him a ride. Levon got in the passenger seat of the car. After driving around for a while, the boys were spotted by police, who thought they looked too young to be driving age. When Antonio saw the police following him, he tried to speed away and ended up crashing the car into a wooden fence and shrubbery, damaging the vehicle.

Levon was charged in a delinquency petition with several counts, including theft over $300 and unauthorized use of a motor vehicle. At an adjudicatory hearing, he claimed not to know that the car was stolen. There was evidence, however, that from the physical condition of the car when he got in it, he either knew or should have known the vehicle was stolen. The juvenile court found that Levon had committed the delinquent act of unauthorized use of a motor vehicle but that the facts were not sustained on the

other counts. Levon and his mother were ordered to pay restitution to the owner of the car for damage to its interior that occurred when it was stolen and for the value of items missing from inside the car, such as the "Club" device. In addition, Levon's mother was ordered to pay restitution to State Farm, the owner's insurer, to cover the cost to repair damage the car sustained in the crash, which State Farm already had reimbursed to the owner.

On appeal, this Court reversed the restitution order for damage caused to the car when it was stolen and missing items from the car. As Levon had not been found involved in the theft of the car or items in it, those items could not be the basis for a restitution order against him or his mother. We further held that although Levon's mother could be ordered to pay restitution for damage to the car that was sustained while Levon was a passenger, the juvenile court did not properly assess her ability to pay. We vacated the order of restitution. On remand, the juvenile court modified the restitution order to eliminate damages arising from the theft of the car and other items and to reduce the restitution award against Levon's mother.

An appeal from the modified restitution order reached the Court of Appeals on the issue whether Levon's unauthorized use of the stolen car was a direct cause of the damage the car sustained when Antonio drove it into the fence and shrubbery. The Court emphasized that to order restitution in a juvenile delinquency case, there must be a finding "'that the child committed a delinquent act[,]'" "'the child damaged, destroyed, or decreased the value of another's property[,]'" and "'such damage, destruction, or

diminution in value caused by the child occurred during or as a result of the delinquent act.'" 361 Md. at 639 (quoting *In Re Jason W.*, 94 Md. App. 731, 736-37 (1993)). "'[T]he statute does not allow restitution simply because property damage results from a delinquent act. It requires that the child have caused that damage.'" *Id*. (quoting *Jason W.*, 94 Md. App. at 737.) The Court pointed out that in *Jason W.*, we held that restitution could not be ordered against a juvenile for damage to a police cruiser caused during a police chase when the juvenile only was found delinquent for operating an unregistered vehicle. It also considered its decision in *In Re Jose S.*, 304 Md. 396 (1985), in which one juvenile was found involved in the act of breaking and entering and another was found involved in the act of theft of goods valued under $300, but both were ordered to pay restitution for half the value of the stolen goods. The Court reversed the restitution order against the juvenile found involved in the act of breaking and entering because that act did not cause the loss of goods.

The Court of Appeals reversed the restitution order in *Levon A.* Although the issue was not before it, it commented that this Court correctly held that Levon could not be liable for restitution for damage to the car caused by breaking into it and stealing it when he was not found involved in car theft or theft. Clearly, Levon's participation as a passenger in the car after it was stolen was not causally connected to that damage. The Court went on to hold that there was no evidence that "as a passive passenger[,]" Levon had anything to do with the collision of the stolen car while Antonio was driving it. 361 Md. at 641. It concluded that in the absence of evidence that Levon "urged Antonio on,"

"directed Antonio's actions," controlled or tried to control the car or did anything to cause Antonio to drive into the fence and shrubbery, there was no causal connection between Levon's unauthorized use of the car and the damage to the car. *Id*.

Williams v. State, 385 Md. 50 (2005), also is instructive. Williams stole four motorcycles from the victim's garage and pled guilty to one count of theft over $500. By the time of sentencing, one motorcycle had been recovered and returned to the victim and the other three motorcycles had been located and towed to a Baltimore City impound lot. Because the victim had not titled the motorcycles in his name, however, the City would not release them to him. At the request of the prosecutor, the court ordered Williams to pay $1,500 – the total value of the three impounded motorcycles – in restitution. The case reached the Court of Appeals, which reversed. It reasoned that the victim's inability to recover his undamaged motorcycles was not a "direct result" of the theft but of his failure to title them in his name. *Id*. at 62. For that reason, the nexus between the theft and the impoundment of the motorcycles did "not partake of the directness required by the [restitution] statute." *Id*.

We return to the case at bar. It is clear from this Court's holding in *Levon A.*, approved by the Court of Appeals in its *Levon A.* opinion, that K.P. cannot be ordered to pay restitution for the loss Mr. Taylor sustained in having to pay the balance of his car loan after the Nissan was declared to be a total loss. The evidence established that the Nissan was stolen on June 8, 2020, two months before the acts of unauthorized use and leaving the scene of an accident on which the delinquency findings rested. It further

established that when the Nissan was not recovered for 30 days after it was stolen, Mr. Taylor's insurance company declared it a total loss and paid him the Nissan's value. It was at that point that Mr. Taylor suffered the loss of having to pay the balance on his car loan that exceeded the total loss value he received – timing the State all but concedes. K.P. was not found to have been involved in the theft of the Nissan and his delinquent acts on August 13, 2020 cannot have been a cause, let alone a direct cause, of the loss Mr. Taylor sustained before then.[8] The record does not support a finding of a direct causal nexus between either of K.P.'s delinquent acts and Mr. Taylor's obligation to pay the balance on his car loan so as to support a restitution award under CP § 11-603(a). *Williams*, 385 Md. at 62.

There likewise is no support in the record for the State's position that K.P.'s delinquent acts caused Mr. Taylor to suffer a second loss – that the Nissan sustained damage and was not returned to him after the events of August 13, 2020 – that could be a basis for the award of restitution. To begin with, although one might reasonably infer that the Nissan sustained damage when K.P. drove it into a parked car, no evidence was introduced of any such damage and what the cost to repair the damage would have been.

[8] If the Nissan had been totaled *after* the crash, we would perceive no error in the award of restitution because, in that circumstance, Mr. Taylor's obligation to pay the outstanding balance on his car loan would be a direct result of K's conduct, a payment on an object with no value. *Cf. In re William L.*, 119 P.3d 1039, 1041-43 (Ariz. Ct. App. 2005) (affirming a restitution order for the amount owed on a car above its fair market value on the basis that the juvenile's delinquent act, which totaled the car, was the direct cause of the economic loss to the victim.)

More important, however, the evidence showed that Mr. Taylor already had been paid the full value of the Nissan as a total loss. Under that circumstance, it would be inconsistent to compensate him for repair costs.

Furthermore, there was no evidence that Mr. Taylor was entitled to have the Nissan returned to him after it was found on August 13, 2020. Mr. Taylor testified that the reason the Nissan was not returned to him was that his insurance company already had written it off as a total loss and had reimbursed him for the cash value of the car. He further testified that he was not informed that he could reclaim the vehicle after the events of August 13. The only reasonable inference one could draw from that evidence is that after the insurance company paid Mr. Taylor the total cash value of the Nissan, it either took title or was entitled to take title to the vehicle. *See* 12 *Couch on Insurance* § 175:81 (explaining that property insurance policies may require that an insured give the insurer property deemed a total loss so that the insurer may "take advantage of the property's salvage value"); *Cf. Gallant Ins. Co. v. Amaizo Fed. Credit Union*, 726 N.E. 2d 860, 863 (Ind. Ct. App. 2000) (explaining that upon payment by insurer of actual cash value of stolen vehicle to the insured's lender, the lender was obligated to send the title to the vehicle to the insurer).

Even if there were evidence that Mr. Taylor was entitled to have the Nissan returned to him after it was located on August 13, 2020, there was no evidence that K.P.'s delinquent acts were a direct cause of the Nissan not being returned to Mr. Taylor. Indeed, even though the record is devoid of evidence about the Nissan's location after the

police arrested K.P. that day, it is certain that K.P. did not have possession of the vehicle after then nor did he have any power to direct where and to whom the vehicle should be taken, if anywhere and to anyone. Whatever dispute there might be over entitlement to possession of the Nissan would be between Mr. Taylor and his insurance company, and would not involve K.P. Finally, and most important for our purposes, the evidence does not support any direct causal connection between K.P.'s delinquent acts and the fact that the Nissan was not returned to Mr. Taylor after the events of August 13, 2020.

For all these reasons, the evidence did not support an award of restitution.[9]

JUDGMENT OF RESTITUTION REVERSED. COSTS TO BE PAID BY THE MAYOR & CITY COUNCIL OF BALTIMORE.

[9] Even if the evidence supported a judgment of restitution, which it did not, we would conclude that the court abused its discretion by ordering Ms. P. to pay restitution. "'[R]ecovery [in a restitution hearing is] intended to follow the ability to pay.'" *Levon A.*, 124 Md. App. at 145 (quoting *Jose S.*, 304 Md. at 401). Consequently, a court ordering restitution must "conduct 'a reasoned inquiry' into a person's ability to comply with an order of restitution." *Id*. (quoting *In re Don Mc.*, 344 Md. 194, 203 (1996)). The evidence showed that Ms. P. is completely disabled and survives on SSDI and food stamps, which do not cover her basic expenses. She relies upon K.P.'s grandmother and her own sister for assistance. Ms. P.'s dire financial situation could not support a reasonable finding that she had the ability to pay restitution. The magistrate found that K.P., who was 15 at the time and is now 16, is old enough to work. *See Levon A.*, 124 Md. App. at 144 (affirming order of restitution against Levon based on the magistrate's finding that he was almost "old enough to get a job and that he should do so.") We would not find the restitution order an abuse of discretion with respect to K.P., but a remand would be necessary for the court to assess the amount of restitution K.P. could pay on his own. Our holding has rendered that issue moot, however.