Circuit Court for Wicomico County
Case No.: 22-J-16-000006 DE

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 829

September Term, 2016

IN RE: N. H.

Meredith,
Reed,
*Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: July 27, 2018

*Davis, Arrie W., J., did not participate in the adoption of this opinion. See, Md. Code, Courts and Judicial Proceedings Article, § 1-403(b).

A juvenile petition was filed in the Circuit Court for Wicomico County, charging N.H., appellant, with delinquency for involvement in offenses that, if committed by an adult, would be theft of property worth less than $1,000, malicious destruction of property, and making threats on school property. Following an adjudicatory hearing, N.H. was found involved as to each count. At disposition, the juvenile court placed N.H. on supervised probation and ordered her to pay $500 in restitution to the victim. N.H. timely appealed, and presents the following questions for our review:

> 1. Was the evidence sufficient to sustain the findings of involvement in the offenses charged?
>
> 2. Was the amount of restitution ordered supported by the evidence?

For the following reasons, we shall reverse the juvenile court's finding of involved on the charge of malicious destruction of property, but otherwise, we affirm all judgments.

BACKGROUND

On November 2, 2015, N.H., a student at Wicomico High School in Wicomico County, Maryland, approached another student (A.R.) in a hallway outside the school cafeteria at the end of the school day. [1] N.H. tapped A.R. on the shoulder and accused A.R. of stealing her phone. Although the two girls were in one class together, A.R. did not know N.H., and A.R. initially thought the accusation must be a joke. N.H. then stated that the cellphone in A.R.'s hand – an iPhone 5S that A.R. received two months earlier on her birthday – belonged to N.H. According to A.R., N.H. stated that "she was going to take it

[1] It is unnecessary to name the minor victim in this case. *See Muthukumarana v. Montgomery County*, 370 Md. 447, 458 n. 2 (2002); *Thomas v. State*, 429 Md. 246, 252 n. 4 (2012).

because I stole hers, and that I was dead." A.R. emphasized that "[N.H.] threatened me that I was dead," and said that "I was going to pay or something like that, and she just took it." N.H. took the phone out of A.R.'s hand and walked away. A.R. testified that she did not give N.H. permission to take the phone. A.R. promptly reported the incident to a school assistant principal and a school deputy.

Lavion Bratten, the Assistant Principal at Wicomico High School, testified that A.R. told her that N.H. stole her cellphone on November 2, the day it occurred. Ms. Bratten then viewed the surveillance video footage taken outside the school cafeteria and confirmed that she saw N.H. approach A.R. and engage her in a conversation. According to Ms. Bratten, "you could see that they were having some words." The video recording showed that N.H. took the phone from A.R. and walked away.

The next morning, November 3, Ms. Bratten called N.H. to the office and informed her that it had been reported that she stole another girl's cellphone. Ms. Bratten told N.H. that she saw her take the phone from A.R. on the video. According to Ms. Bratten, N.H. then "admitted that she took the phone . . . ." When Ms. Bratten was asked to describe her conversation with N.H. further, Ms. Bratten testified that N.H. told her that another girl had told her that A.R. stole N.H.'s phone. Ms. Bratten confirmed that she had spoken to N.H. the day before this incident because N.H. reported that her own cellphone had been either lost or stolen. Thereafter, when N.H. went to confront A.R., A.R. showed her the phone and, according to N.H., voluntarily gave her the phone. Ms. Bratten testified that N.H. "said that she didn't take [A.R.'s] phone, that [A.R.] had given it to her." Nevertheless, Ms. Bratten maintained that N.H. "admitted to taking [A.R.'s] phone."

N.H. also informed Ms. Bratten during their conversation the day after the incident that she no longer had the phone in her possession. Ms. Bratten testified that N.H. "told me she gave it to a boy. She didn't know his name. She told me she cracked it because – and the boy said he was going to take it, and she was going to sell it."

Ms. Bratten further testified that A.R. just wanted her phone back, but, even after N.H. was given several days to return the phone, N.H. was unable to get the phone back from the unidentified boy.

Deputy Sheriff Bratten was assigned to Wicomico High School.[2] Deputy Bratten confirmed that he spoke to A.R. on November 3, 2015, the day after the incident, and A.R. reported that her iPhone 5S was stolen from her the previous day. Deputy Bratten then viewed the surveillance recordings from the date and time reported by A.R., and found a video-only recording that showed N.H and A.R. "engaged in some type of conversation." Although Deputy Bratten could not hear what was said between the two students, he testified that he saw N.H. take the phone from A.R.[3]

After hearing argument, the court ruled as follows at the adjudication hearing:

> I . . . find as a fact that [A.R] was an entirely credible witness. I agree with the State that the fact that she couldn't remember whether her phone was a 5 or a 6 didn't make her testimony credible [sic]. She was very clear

[2] Deputy Bratten is not related to Assistant Principal Bratten.

[3] Deputy Bratten testified that, after he originally requested a copy of the surveillance video from the Board of Education, a video recording other than the one he had viewed was provided to him. He was not aware that a mistake had been made until shortly before adjudication, and, by that point in time, he testified, the video of the incident he had previously viewed was "no longer retrievable. The time had elapsed." Consequently, no video of the incident was admitted into evidence.

> on the salient points which is she was standing in the line, waiting to sign up for after school. Somebody approached her. Later, she learned it was – well, it turned out it was the Respondent [N.H.] who approached her. The Respondent approached her and . . . accused [A.R.] of stealing her phone. And then said let me see your phone and then the Respondent took the phone and left.
>
> Then the Respondent in the first meeting with [Assistant Principal] Bratten said, ["]yes, I took the phone because I thought she stole my phone and if she stole my phone I was going to make sure she didn't have a phone.["] That's sufficient in my mind. So I find her involved as to count one.
>
> I find beyond a reasonable doubt the State has proven its case. I find her involved as to count one. [N.H.] made a statement about what she did with the phone. It was admission against interest, so I find her involved as to count two.
>
> And with regard to her statement that was made to [A.R.], I find [N.H.] involved as to count three.

At disposition, the juvenile court heard from Edward Adkins, a case management specialist with the Maryland Department of Juvenile Services. Mr. Adkins recommended that N.H. be placed on a period of supervised probation with all the standard conditions.

The juvenile court then heard from [A.R.]'s mother, who testified that she bought A.R. the cellphone, an iPhone 5S, on June 20, 2015, approximately four and a half months before it was stolen on November 3, 2015. Referring to the original purchase price for the phone listed on the receipt, A.R.'s mother testified that she had paid $583.00 for the phone.[4] She also testified that there was no damage to the phone when it was stolen. The phone was also "prepaid" and not subject to a plan. The phone was never recovered.

[4] Although admitted as State's Exhibit 2 at the disposition hearing, the receipt does not appear to be included with the record on appeal.

A.R. also testified at the disposition hearing on June 21, 2016. She testified that the stolen phone was an iPhone 5S. She did not know the storage capacity for the phone, *i.e.*, whether the phone was capable of storing 16 or 32 gigabytes. But, she testified, to her recollection, the phone was not damaged and was in good working condition at the time of the theft. A.R. also confirmed at the disposition hearing that she had purchased an iPhone 6 that cost approximately $580.00 as a replacement phone. She testified that she purchased it "in a black Friday sale," sometime after her phone was taken by N.H. on November 2, 2015.

Before the court made its decision, N.H.'s counsel argued that A.R. was not entitled to restitution for the original purchase price of the phone. Noting that "[i]ndividuals of a certain age change phones as often as most people in this room change like their outfits," counsel urged the court to order restitution of only $100, saying:

> So, Your Honor, I don't believe that the complaining witness is entitled to $583. It's a three-generation old phone.
>
> They don't know how many gigabytes it had. Quite frankly, six months later, they paid almost the exactly the same amount for the next generation on [sic]. So that should indicate at least some idea of the value.
>
> I would ask that the Court award restitution in the amount of $100, because that's what it would cost, I believe, to replace an [i]Phone 5S at this particular juncture which is exactly what she is entitled to. She is entitled to what she had as a six-month-old [i]Phone 5S.[5]

[5] There was no evidence to support counsel's argument that it would have cost $100 to replace A.R.'s stolen phone in November 2015.

After argument of counsel concluded, the court placed N.H. on supervised probation, subject to standard conditions. Further, the court ordered N.H. to pay restitution in the amount of $500.00 for the stolen cellphone. The court explained:

> Well, had she had the phone, she would not have had to replace it with a newer phone. She is entitled to what the value of the old phone it [sic] was. I believe the value to her was in the neighborhood of $500. The Court is going to determine restitution to be $500.

DISCUSSION

I.

N.H. first contends that the evidence was insufficient to sustain the findings of involvement on the charges of theft less than $1,000, malicious destruction of property, and making a threat on school grounds. The State disagrees. As will be explained, we conclude that the evidence was sufficient as to the theft and threat charges, but inadequate to find N.H. involved as to the charge of malicious destruction of property.

The Juvenile Causes Act, codified at Maryland Code (1973, 2013 Repl. Vol., 2016 Supp.), Courts and Judicial Proceedings Article ("CJP"), §§ 3-8A-01 - 3-8A-34, "grant[s] jurisdiction in juvenile courts over young offenders and establish[es] the process for treating them, to advance its purpose of rehabilitating the juveniles who have transgressed to ensure that they become useful and productive members of society." *Lopez-Sanchez v. State*, 155 Md. App. 580, 598 (2004) (citation omitted), *aff'd*, 388 Md. 214 (2005), *cert. denied*, 546 U.S. 1102 (2006); *see also In re D.M.*, 228 Md. App. 451, 465 (2016) ("Juvenile proceedings aspire to 'the idealistic prospect of an intimate, informal protective proceeding,' and 'retain their special and informal nature[.]'" (internal citations omitted)).

A "delinquent child" is a child "who has committed a delinquent act and requires guidance, treatment, or rehabilitation." CJP § 3-8A-01(m). A "delinquent act" is "an act which would be a crime if committed by an adult." CJP § 3-8A-01(l). The allegations against the child must be proved beyond a reasonable doubt. CJP § 3-8A-18(c)(1); Md. Rule 11-114(e)(1). The evidence is legally sufficient to meet this standard in a juvenile delinquency case if, "after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Timothy F.*, 343 Md. 371, 380 (1996) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)); *accord In re James R.*, 220 Md. App. 132, 137-38 (2014). "Judging the weight of evidence and the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *In re Timothy F.*, 343 Md. at 379.

On appeal, the "appellate court will 'review the case on both the law and the evidence.' We review any conclusions of law *de novo*, but apply the clearly erroneous standard to findings of fact." *In re Elrich S.*, 416 Md. 15, 30 (2010) (internal citation omitted); *see also In re James R.*, 220 Md. App. at 138 ("Absent clear error, an appellate court will not set aside the judgment of the trial court." (citation omitted)).

A. Theft under $1,000

N.H. was charged with theft under $1,000 pursuant to Maryland Code (2002, 2012 Repl. Vol., 2016 Supp.), Criminal Law Article ("Crim. Law"), § 7-104, which provides, in pertinent part:

> (a) A person may not willfully or knowingly obtain or exert unauthorized control over property, if the person:
>
> (1) intends to deprive the owner of the property;
>
> (2) willfully or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or
>
> (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

Although the consolidated theft statute does not define "unauthorized," several of the key terms in Section 7-104(a) of the Criminal Law Article are defined in Section 7-101. For instance, "property" means "anything of value." Crim. Law § 7-101(i). The term "deprive" is defined in Crim. Law § 7-101(c) to mean:

> [T]o withhold property of another:
>
> (1) permanently;
>
> (2) for a period that results in the appropriation of a part of the property's value;
>
> (3) with the purpose to restore it only on payment of a reward or other compensation; or
>
> (4) to dispose of the property or use or deal with the property in a manner that makes it unlikely that the owner will recover it.

"Exert control" is defined, in pertinent part, by statute and "includes to take, carry away, appropriate to a person's own use or sell, convey, or transfer title to an interest in or possession of property." Crim. Law § 7-101(d). "Obtain" means, "in relation to property, to bring about a transfer of interest in or possession of the property." Crim. Law § 7-101(g). An "owner" is "a person, other than the offender: (1) who has an interest in or possession

of property regardless of whether the person's interest or possession is unlawful; and (2) without whose consent the offender has no authority to exert control over the property." Crim. Law 7-101(h).

N.H. insists that the evidence was not sufficient to prove that she "willfully or knowingly" obtained or exerted "unauthorized control" over the cell phone because there was evidence that the victim "gave it to me." But we are obligated to consider the evidence in the light most favorable to the State, and, when viewed in that light, there was ample evidence to support the court's finding on the theft count. A.R. testified that N.H. took her phone from her without her permission. According to witnesses who testified at the adjudication hearing, the school surveillance video confirmed that N.H. took A.R.'s phone. A.R. also testified that the phone had been purchased for approximately $580.00. We are satisfied that there was sufficient evidence to support the court's finding that N.H. was involved, beyond a reasonable doubt, in theft under $1,000.

B. Malicious destruction of property

The evidence of malicious destruction of property was less conclusive. N.H. contends that "[c]arelessly dropping the phone and cracking the glass would not be malicious destruction." The State responds by citing *Duncan v. State*, 5 Md. App. 440 (1968), and asserting that N.H.'s admission that the glass was cracked "exhibited a 'property-endangering state of mind, without justification, excuse, or mitigation[.]'" But we discern no evidence in the record that would permit a finding, without resort to speculation, that N.H. maliciously destroyed, defaced, or injured the cellphone of A.R.

Crim. Law § 6-301(a) provides: "A person may not willfully and maliciously destroy, injure, or deface the real or personal property of another." Malicious destruction of property "is a specific intent crime, which 'requires both a deliberate intention to injure the property of another and malice.'" *Marquardt v. State*, 164 Md. App. 95, 152 (2005) (quoting *Shell v. State*, 307 Md. 46, 68 (1986), *abrogated on other grounds in Price v. State*, 405 Md. 10 (2008)). "In other words, it is not sufficient that the defendant merely intended to do the act which led to the damage to property; it is necessary that the defendant actually intended to cause the harm to the property of another." *In re Taka C.*, 331 Md. 80, 84 (1993).

The Court of Appeals has explained that, in this context, "willfully" characterizes "'an act *done with deliberate intention* for which there is no reasonable excuse . . . and the word 'maliciously' is descriptive of a wrongful act committed *deliberately* and without legal justification.'" *Shell, supra*, 307 Md. at 66 (citations omitted; emphasis in *Shell*). *See also Duncan, supra*, 5 Md. App. at 445 ("the special element of mens-rea in malicious mischief, designated in the statute as 'wilfully and maliciously', requires either a specific intent to cause the destruction, injury, defacement or molestation of the property of another, or an act done in wanton and wilful disregard of the plain and strong likelihood of such harm, without any justification, excuse, or substantial mitigation").

Although there was evidence that N.H. admitted that she had "cracked" the phone, there was no evidence regarding the circumstances under which that apparent damage to the phone occurred. We are not persuaded by the State's argument that simply dropping a cellphone shows a "property-endangering" state of mind and is sufficient to establish

recklessness or gross negligence. Consequently, we shall reverse the finding that N.H. was involved in the malicious destruction of property.

C. Making threats on school property

N.H. was also found involved in making threats on school property. The pertinent statute provides, in part: "A person may not molest or threaten with bodily harm any student . . . or any other individual who is lawfully" "[o]n the grounds or in the immediate vicinity of any institution of elementary, secondary, or higher education." Maryland Code (1978, 2014 Repl. Vol.), Education Article, § 26-101(b).

N.H. asserts there was no evidence of any threats, but only video evidence of N.H. and A.R. talking. But A.R. specifically testified that N.H. "threatened me that I was dead," and also said that "I was going to pay or something like that[.]" We conclude that A.R.'s testimony, which the court was entitled to credit, was sufficient to support the finding that N.H. was involved in making a threat to a student on school property.

II.

N.H. also asserts that the amount of restitution was not supported by the evidence. More specifically, N.H. argues that the court's order that she pay restitution of $500 for the used phone was not based on competent evidence. The State responds that the court did not abuse its discretion in awarding $500 in restitution. We agree with the State.

The Court of Appeals has stated that a juvenile court has "broad discretion to order restitution." *In re Don Mc*, 344 Md. 194, 201 (1996). This Court has similarly noted that juvenile courts have "broad discretion to order restitution, either against the juvenile himself, a parent, or both." *In re Earl F.*, 208 Md. App. 269, 276 (2012) (citations and

internal quotation marks omitted). Statutory authority for this discretion is found in CJP § 3-8A-28, which states that "[t]he 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." The cross-referenced provision in Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("Crim. Proc."), provides in § 11-603, in part:

> (b) A victim is presumed to have a right to restitution under subsection (a) of this section 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.

The statutory scheme authorizes compensation of "victims who have . . . suffered property loss as a result of the wrongful acts of a minor" because such payments can promote rehabilitation by demonstrating to the juvenile the actual consequences of the juvenile's behavior and by requiring the minor to take corrective action. *In re: Earl F.*, 208 Md. App. at 276 (citation omitted). This Court reviews a juvenile court's restitution order *de novo* for legal error as to the standards applied, for clear error as to any first-level findings of fact, and for abuse of discretion as to the ultimate decision to require a payment and the amount of that payment. *See In re Earl F.*, 208 Md. App. at 275 & n.2 (citation omitted).

"'Competent evidence' is simply evidence that is reliable and admissible." *Juliano v. State*, 166 Md. App. 531, 540 (2006); *see also In Re: Delric H.*, 150 Md. App. 234, 248-49 (2003) (recognizing that, "even though a court may decline to require a strict application of evidentiary rules [in a restitution hearing], there still exists an inherent

reliability/credibility requirement which a proponent of the offered evidence must satisfy"). The amount of the restitution award must be established by the State by a preponderance of the evidence. *Juliano*, 166 Md. App. at 540; *accord McDaniel v. State*, 205 Md. App. 551, 559, *appeal dismissed*, 429 Md. 528 (2012).

In this case, A.R.'s mother testified that she purchased the stolen iPhone 5S for $583.00 on June 20, 2015, approximately four and a half months before it was stolen. This testimony was corroborated by a receipt that was admitted in evidence, without objection, at the disposition hearing. The mother testified that the phone had no damage, and "[i]t was basically new." A.R. also testified that the stolen phone was never returned to her, and she purchased an iPhone 6 as a replacement at a black Friday sale, presumably later that same November, for "580 something." Based on this uncontroverted evidence, the court determined that the value of the stolen phone in November 2015 was $500.00, which is approximately 85% of the amount A.R.'s mother had paid for the iPhone 5S. This finding was not clearly erroneous.

FINDING OF INVOLVED ON COUNT 2 (MALICIOUS DESTRUCTION OF PROPERTY) REVERSED; OTHERWISE, ALL JUDGMENTS AFFIRMED.

COSTS TO BE PAID ONE HALF BY APPELLANT AND ONE HALF BY WICOMICO COUNTY.