Circuit Court for Prince George's County
Case No. JA-17-0265

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 853

September Term, 2017

IN RE: G.R.

Kehoe,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 17, 2018

On May 18, 2017, in the Circuit Court for Prince George's County, sitting as a juvenile court, appellant G.R. pleaded involved to robbery, second-degree assault, and wearing and carrying a dangerous weapon. The juvenile court adjudicated appellant delinquent and committed him to the custody of the Department of Juvenile Services for an out-of-home placement. The court also ordered appellant to pay $120 in restitution: $50 to replace a phone, $5 for a binder, and $65 for the cost of replacing three locks corresponding to three keys appellant stole during the robbery. Appellant timely appealed.[1] Although he concedes that the $50 restitution award for the phone was correct, he argues that the court erred in awarding restitution of $5 for the binder and $65 for the locks. For the reasons that follow, we vacate only the portion of the restitution order that required G.R. to pay $65 for the three locks and otherwise affirm the judgment of the circuit court.

BACKGROUND

On May 1, 2017, officers responded to a report of an armed robbery in the Largo area of Prince George's County. When police arrived on the scene, they made contact with J.S. and J.Y., the juvenile victims in this case. The victims informed the officers that while they were walking home from school, multiple suspects, including appellant, robbed J.S. at knifepoint. The suspects, including appellant, took from J.S.: two pairs of Jordan brand sneakers; a Samsung smartphone; and a backpack containing a binder and J.S.'s keys to his sister's, mother's, and father's houses. J.Y. observed the suspects robbing his friend,

[1] Appellant presented the following question for our review: "Did the lower court err in ordering G.R. to pay $120.00 in restitution?"

and attempted to intervene to help J.S. Appellant then approached J.Y. with a box cutter, and took J.Y.'s iPhone and wallet.

The police transported the victims to the police station to interview them. During the drive, J.S. observed three of the suspects, including appellant, walking down the street. When an officer attempted to apprehend the suspects, they fled on foot. Appellant dropped a backpack that he was carrying. Inside, officers recovered a pair of Jordan sneakers, J.Y.'s iPhone, and the box cutter appellant used to threaten J.Y. When officers eventually apprehended appellant, he was wearing the other pair of stolen Jordan sneakers.

On May 18, 2017, in proceedings before the Circuit Court for Prince George's County, sitting as a juvenile court, appellant pleaded involved to the robbery of J.S., and involved to the second-degree assault and carrying a dangerous weapon as to J.Y. The State sought restitution for both J.S. and J.Y.

At the restitution hearing on June 16, 2017, the court ordered appellant to pay $120 in restitution to J.S., but denied restitution as to J.Y. The court awarded restitution as follows: $50 for the replacement fee for the phone; $65 to replace the locks on J.S.'s sister's, mother's, and father's houses; and $5 for a binder. Of particular relevance here, the court found that the cost of replacing the three locks was a direct result of appellant stealing J.S.'s keys during the robbery. As stated above, appellant timely appealed the court's restitution order.

DISCUSSION

Appellant presents two separate arguments in challenging the restitution order. First, he argues that the trial court erred in ordering him to pay $65 in restitution for the

locks because their replacement "was not a direct result of [appellant's] involvement in the robbery of J.S." Second, appellant argues that the court erred in awarding restitution for both the locks and the binder because these items were neither specifically identified in the petition nor mentioned at the plea hearing, thus depriving appellant of notice and violating his due process. We shall address each contention in turn.

I. Direct Result of Delinquent Act

Appellant first argues that J.S.'s assumed decision[2] to replace the locks was not a "direct result" of appellant's robbery as that term is defined in the restitution statute. Generally, we apply the abuse of discretion standard in reviewing a trial court's decision to grant or deny restitution. *In re Cody H.*, 452 Md. 169, 181 (2017). When that decision involves the interpretation of a statute, however, we apply the *de novo* standard of review. *Griffin v. Lindsey*, 444 Md. 278, 285 (2015). Here, appellant contends that the trial court incorrectly construed Md. Code (2001, 2008 Repl. Vol., 2017 Supp.) § 11-603 of the Criminal Procedure Article ("CP"), which governs the grounds for restitution. Accordingly, we apply the *de novo* standard of review.

CP § 11-603 provides, in relevant part, that:

> (a) *Conditions for judgment of restitution*. –A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

[2] The record does not clarify whether J.S. himself paid for the new locks. Neither G.R. nor the State addressed this issue on appeal, and it is immaterial to our "direct result" analysis.

> (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[.]

Appellant does not specifically state in his brief which section of the statute the court incorrectly construed. Instead, he simply argues that the cost of replacing the locks was not a "direct result" of his delinquent act. We agree.

In *Goff v. State*, 387 Md. 327, 344 (2005), the Court of Appeals observed that "the definition section of the restitution statute[] does not include a definition of the term 'direct result.'" Instead, the *Goff* Court "determine[d] 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[.]" *Id*. There, Goff forced his way into the victim's apartment and began pushing and striking the victim. *Id*. at 332. Eventually, Goff and the victim ended up in the victim's bathroom, where Goff pinned the victim in the shower and struck the victim several times, causing damage to the shower insert. *Id*. The court found Goff guilty of several crimes, including second-degree assault and trespass, based on an agreed statement of facts. *Id*. at 331. Following Goff's conviction, the court awarded the victim $2,156 in restitution to repair the shower. *Id*. at 336.

On appeal, Goff argued that the damage to the shower was not a direct result of his crime. *Id*. at 339. The Court of Appeals rejected Goff's argument, 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)). The Court stated that "It [was] clear that [Goff] damaged the shower during and because of the assault on [the victim]. No intervening agent or occurrence caused the damage. Additionally, no time lapsed between the criminal act and the resulting damage caused." *Id*. at 344. Accordingly, the Court concluded that, based on the plain language of § 11-603, "the damage to the shower was a direct result of the" assault and that restitution was proper. *Id*.

Although we reach a different result here, the *Goff* Court's analysis is instructive. Whereas in *Goff* there was no temporal lapse between the assault and the resulting damage, here there was such a lapse. At the moment that appellant stole J.S.'s *keys*, there was no immediate resultant harm to the *locks* corresponding to those keys. Appellant's delinquent act of robbing J.S. caused no immediate damage to any of the locks, even if common sense might suggest that a loss of confidence in home security might flow from the theft of the keys. Instead, the damage occurred when J.S. incurred costs by choosing to replace the three locks, presumably to restore his family's security.[3] In *Goff*, there was no intervening

[3] At the restitution hearing, appellant proffered to the juvenile court that, following his apprehension, the State recovered and possessed J.S.'s keys, negating any risk to J.S.'s family's security. Appellant claimed that no one had informed J.S. or his family that the keys had been recovered until after the locks had been replaced.

agent or occurrence separate from the attack that caused damage to the shower—in the process of assaulting the victim, Goff damaged the shower and therefore the shower's replacement costs were a direct result of the assault. *Id*. Here, however, J.S. acted as an intervening agent when he made the decision to replace the *locks* at his family members' homes following the robbery of his *keys*.

Williams v. State, 385 Md. 50 (2005) further bolsters our conclusion that the cost to replace the locks was not a "direct result" of the crime or delinquent act as required by the restitution statute. There, Williams pleaded guilty to theft for stealing four motorcycles. *Id*. at 51-52. Police recovered the stolen motorcycles, and impounded them. *Id*. at 52. When the victim attempted to recover three of the stolen motorcycles, however, the impound lot refused to release them because the victim had failed to properly title them.[4] *Id*. The trial court noted that the victim "wouldn't have had to worry about the recovery" if Williams had not stolen the motorcycles, and ordered Williams to pay the victim $1,500 in restitution. *Id*. at 53-54.

The Court of Appeals vacated the trial court's restitution order, holding that the victim's "inability to reclaim the undamaged motorcycles was not the direct result of Williams's theft of them." *Id*. at 62. Instead, the Court explained that,

> 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 the underlying theft. The aftermath of the theft in this case merely revealed [the victim's] possible failures to title*

[4] Though not relevant to our analysis, the impound lot released the fourth motorcycle because it was properly titled. *Williams*, 385 Md. at 52.

> *properly the motorcycles with the State and/or register them with Baltimore County.*

Id. (emphasis added). Although police only placed the motorcycles in the impound lot because Williams had stolen them, the loss occurred because the victim could not sufficiently establish ownership in order to retrieve them from the impound lot. *Id*. The victim's failure to properly title the motorcycles severed the nexus between Williams's theft and the impound lot's refusal to release the three remaining motorcycles. The Court therefore held that the restitution order for the three motorcycles was improper under the restitution statute. *Id.* at 63.

Here, the claimed restitution costs resulted from J.S.'s decision to replace the locks corresponding to the stolen keys. As in *Williams*, where the victim's failure to properly title his motorcycles severed the required nexus to the crime, J.S.'s decision to change the locks at his family members' homes likewise severed the nexus to appellant's delinquent act. In the parlance of *Williams*, while there is undeniably a causal link between the theft of the keys and J.S.'s decision to replace his locks, "that nexus does not partake of the directness required by the statute." *Id*. at 62. Accordingly, the trial court erred in ordering $65 in restitution for J.S. to replace the three locks.

II. Lack of Notice

Finally, appellant argues that the trial court erred in ordering restitution in the amount of $65 for the locks and $5 for a binder because he was not provided with sufficient notice as to those losses. Because we explained above that the court erred in awarding $65

in restitution for the locks, we only address whether there was sufficient notice as to the $5 binder.

According to appellant, count three in his juvenile petition listed only shoes and a smartphone as stolen property. Moreover, appellant asserts that during the plea proceedings the State only mentioned that he stole a backpack valued at $40. Aside from baldly stating that a lack of such notice violated his due process, appellant provides no legal support for this contention.

Initially, we note that we are under no obligation to seek out the law that supports appellant's position. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (stating that it is not the appellate court's duty to seek out law to sustain an appellant's position). Nonetheless, we note that,

> Because restitution is part of a criminal sentence, as a matter of both Constitutional due process and Maryland criminal procedure, such an order may not be entered unless (1) the defendant is given reasonable notice that restitution is being sought and the amount that is being requested, (2) the defendant is given a fair opportunity to defend against the request, and (3) there is sufficient evidence to support the request[.]

Chaney v. State, 397 Md. 460, 470 (2007). Here, the record indicates that at the plea hearing, the State proffered to the court that appellant stole from J.S.: two pairs of Jordan brand sneakers, a Samsung smartphone, and a backpack, with a combined value of approximately $1,000. Additionally, the factual allegations in the juvenile petition mentioned that J.S.'s stolen backpack was worth approximately $40. Furthermore, at the plea hearing wherein appellant pleaded involved, the court scheduled a restitution hearing on the same day as the placement review. At that hearing, appellant, through counsel,

argued against restitution. Accordingly, appellant was given reasonable notice that the State would seek restitution, and appellant was given a fair opportunity to defend against the request. Finally, the record indicates that appellant stole J.S.'s backpack while J.S. was walking home from school. A binder is an object reasonably expected to be found in a minor's backpack in this context. There was sufficient evidence for the juvenile court to order restitution for J.S.'s binder.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS A JUVENILE COURT, VACATED IN PART AND AFFIRMED IN PART. COSTS TO BE PAID BY PRINCE GEORGE'S COUNTY.