

Circuit Court for Baltimore County
Case No. C-03-JV-20-000135

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1139

September Term, 2020

IN RE: D.B.

Beachley,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 17, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Appellant D.B., a juvenile, assaulted a fellow student and caused damage to his iPhone. He was charged in the Circuit Court for Baltimore County, sitting as a juvenile court, with second-degree assault. After proceeding on an agreed statement of facts, D.B. was found involved and delinquent. The court placed him on supervised probation and ordered him to pay \$1,266.98 in restitution. On appeal, D.B. asks one question, which we have rephrased:

Did the juvenile court err by ordering D.B. to pay restitution that included the full purchase price of a new iPhone?

Perceiving no error or abuse of discretion by the juvenile court, we affirm the restitution order.

BACKGROUND

On November 27, 2019, D.B., age 16, punched and kicked A.B., a fellow student at Franklin High School, while outside of the school building. A.B. lost consciousness and suffered a minor concussion. He was transported to Sinai Hospital by ambulance for medical treatment.

In the juvenile court, D.B. proceeded before a magistrate on an agreed statement of facts. The State proffered that school surveillance footage would show that D.B. punched A.B., threw him to the ground, and kicked him. The magistrate found the evidence sufficient to support a delinquency finding and held a disposition and restitution hearing. At the end of the hearing, the magistrate recommended that D.B. be found delinquent. As to disposition, the magistrate recommended that D.B. be placed on

supervised probation and ordered to pay \$1,298 in restitution, \$1,099 of which covered the replacement cost for A.B.'s iPhone 11 Pro Max that was damaged during the assault.

D.B. excepted to the magistrate's recommendations on disposition and restitution.

The juvenile court held a *de novo* exceptions hearing on those issues, during which the following pertinent evidence was adduced. A.B. testified that he had purchased a brand new iPhone 11 Pro Max a few weeks before the assault. He paid \$800 for the phone and received a \$200 trade-in credit from the Apple Store for his iPhone 7. On the Apple website, the cost to purchase an iPhone 11 Pro Max was \$1,099.

A.B. had his phone with him when he was assaulted. After the assault, the glass covering the back of the iPhone was cracked in multiple places. The State introduced a photograph of the iPhone depicting its damaged condition. A.B. stated that the iPhone was operational. A.B. unsuccessfully tried to sell his damaged phone after the assault. He purchased a new iPhone 11 Pro Max with a loan from a family member that he was paying off.

At the close of the evidentiary portion of the hearing, defense counsel argued that the evidence did not show that D.B.'s assault on A.B. caused the damage to his iPhone but, even if the court so found, the evidence showed that the damage was "cosmetic." Defense counsel suggested that A.B. could have had his phone "repaired for probably under \$100" and that D.B. should not be ordered to pay for the total cost to replace the iPhone 11 Pro Max.

With respect to the phone, the juvenile court found as follows:

We have the telephone. I have a picture, State's Exhibit 1 was the picture of the telephone. The testimony was that it was recently purchased within less than a month, probably more like a couple weeks before this incident happened. It was cracked, it was working, it was in perfect condition that morning, it's got this condition.

The victim is unconscious by the assault making it more difficult for him to specifically say exactly what happened here. What we do have is the most likely explanation for what happened, I think, is that the phone was damaged in the incident. So I think restitution for the phone, and the numbers we have for the phone is he paid \$800 for the phone, an additional \$200 for the trade in makes the phone \$1,000.

Now, [defense counsel] makes an interesting point about he easily could have gotten it fixed, and talks about some car analogies there. The analogy there is, what would it cost to fix this thing? Well, [defense counsel] suggested about a \$100 or so, which may entirely be true. Unfortunately, I don't have evidence of that. What I do have evidence of is what the phone cost, and that it's been significantly damaged, which I think is what [the State's Attorney] refers to under the statute. So I'm going to order \$1,000 of restitution in that regard.

The juvenile court entered an amended order for probation, including the restitution order.

This timely appeal followed. We shall supplement these facts as necessary to our discussion of the issues.

STANDARD OF REVIEW

“Generally, an appellate court reviews a circuit court's order of restitution for abuse of discretion.” *In re G.R.*, 463 Md. 207, 213 (2019) (citing *In re Cody H.*, 452 Md. 169, 181 (2017)). If the restitution order “involves ‘an interpretation and application of Maryland statutory and case law[, however,]’ we review its decision de novo.” *Id.* (quoting *Goff v. State*, 387 Md. 327, 337–38 (2005)).

DISCUSSION

A juvenile court may enter a judgment of restitution against a child in a juvenile delinquency proceeding (or against the child’s parent) consistent with Title 11, Subtitle 6 of the Criminal Procedure Article. Md. Code (1996, 2020 Repl. Vol.), § 3-8A-28 of the Courts and Judicial Proceedings Article. Section 11-603(a) of the Criminal Procedure Article provides, in relevant part, that

[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 . . . *as a direct result of the . . . delinquent act, property of the victim was stolen, damaged, destroyed, . . . or its value substantially decreased.*

Md. Code (2001, 2018 Repl. Vol.), § 11-603(a)(1) of the Criminal Procedure Article (emphasis added). Before restitution may be ordered, there must be “a direct result between the qualifying crime committed and the damages inflicted[.]” *Pete v. State*, 384 Md. 47, 61 (2004).

D.B. contends that the juvenile court erred in this case by determining that A.B. was deprived of the use of his iPhone as a “direct result” of the assault because the evidence only showed that the assault caused “cosmetic damage” to it. Consequently, he maintains that A.B. only would be entitled to restitution in an amount sufficient to repair the damage to the phone, not the cost to replace it. He argues that A.B.’s decision to “get rid of a perfectly functional” iPhone was an “intervening cause” of his damages, for which D.B. should not be held responsible.

The State responds that because D.B. concedes that the evidence was sufficient to

establish that A.B.’s phone was damaged “as a direct result” of the assault and because there was competent evidence before the juvenile court of the amount A.B. paid for the phone, the only issue before this Court is whether the juvenile court abused its discretion by ordering restitution for the total cost of the phone. It maintains that the court properly exercised its broad discretion by determining that the significant damage to the phone justified the restitution award.

D.B.’s reliance upon the Court of Appeals’ decision in *Williams v. State*, 385 Md. 50 (2005), is misplaced. There, a defendant stole four motorcycles from the victim’s garage. *Id.* at 51–52. He pled guilty to one count of theft over \$500. *Id.* at 51. One motorcycle had been recovered and returned to the victim, who was holding it for a third party. *Id.* at 52. The other three motorcycles were located and towed to a Baltimore City impound lot. *Id.* Because the victim had not titled the motorcycles in his name, however, the City would not release the motorcycles to him. *Id.* Consequently, the State argued that the defendant should be ordered to pay \$1,500 in restitution, encompassing the total value of the three impounded motorcycles. *Id.* The trial court so ordered. *Id.* at 54. The Court of Appeals 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 62–63. The nexus between the theft and the impoundment of the motorcycles did “not partake of the directness required by the statute.” *Id.* at 62.

In *Williams*, there was no damage to or loss of property caused by the theft, but rather an inability to establish ownership of that property sufficient to satisfy the City and

permit recovery of that property. Here, in contrast, D.B. concedes there was sufficient evidence showing that “the cracks in the glass on the back of the iPhone were a direct result of the assault” and that “A.B. was entitled to restitution for that loss.” Consequently, D.B. does not challenge the court’s finding that A.B.’s property was damaged as a direct result of the delinquent act. Upon a showing that a “loss is attributable to an adjudicated offense,” . . . the “amount of restitution is limited only by the State’s proof of loss attributed to the offense or conduct in which the juvenile was adjudged to be involved.” *In re Earl F.*, 208 Md. App. 269, 279 (2012).

The State’s proof of loss established that, just weeks before the assault, A.B. paid \$1,000 for the phone, consisting of a \$200 trade-in allowance for his old phone and \$800 in cash. The State also adduced evidence of the cost of a new iPhone, which slightly exceeded the amount paid by A.B. D.B.’s argument that the damage to the phone was purely cosmetic is somewhat disingenuous. The photograph of the phone admitted in evidence shows that the glass back of the phone was severely damaged, with a multitude of cracks near the camera lenses and other cracks extending all the way to the bottom of the phone. That evidence corroborated the court’s finding of fact that the phone was “significantly damaged.” Further, A.B.’s testimony that he was unable to sell the damaged iPhone was evidence that the phone did not have a market value in its significantly damaged condition. D.B. did not rebut the State’s evidence by adducing any evidence of the cost to repair the iPhone or its resale value in its damaged state. As previously noted, Section 11-603(a)(1) of the Criminal Procedure Article permits the

court to order restitution where the value of the victim's property is substantially decreased as a direct result of the crime or delinquent act. Based on the court's finding that the phone was significantly damaged and A.B.'s testimony that the damaged phone did not have a resale value, we conclude that the juvenile court did not err or abuse its discretion by awarding A.B. the \$1000 purchase price he paid for a new iPhone just weeks before the assault. We therefore affirm.

**JUDGMENT OF RESTITUTION ENTERED
BY THE CIRCUIT COURT FOR BALTIMORE
COUNTY, SITTING AS THE JUVENILE
COURT, AFFIRMED. APPELLANT TO PAY
COSTS.**