

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1190

September Term, 2015

IN RE: CODY H.

Berger,
Nazarian,
Alves, Krystal Q.
(Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 4, 2016

*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.

On February 19, 2015, following an adjudicatory hearing, a family magistrate of the Circuit Court for Baltimore County, sitting as a juvenile court, found appellant, Cody H. (“Cody”), a juvenile, involved in the delinquent act of assault. The assault was based upon an incident during which Cody punched the victim, sixteen-year-old Zachary, in the face. At a disposition hearing held on April 29, 2015, the magistrate recommended awarding restitution in the amount of \$1,489.61 to the victim for medical expenses. The State had further sought restitution for Zachary’s lost earnings, but the magistrate did not award restitution for lost earnings on the grounds that they were speculative. The State filed exceptions to the restitution award and an exceptions hearing was held before a judge of the juvenile court on June 15, 2015. The juvenile court judge granted the State’s exception on the issue of restitution and imposed restitution in the amount of \$5,000 for Zachary’s lost earnings, in addition to the restitution awarded for Zachary’s medical expenses.

On appeal, Cody presents two issues for our review,¹ which we have consolidated and rephrased as a single issue:

Whether the juvenile court abused its discretion by ordering restitution in the amount of \$5,000 for Zachary’s lost earnings.

For the reasons stated herein, we shall affirm.

¹ The issues, as presented by Cody, are:

(1) Is the \$5,000 of restitution ordered for lost earnings supported by sufficient evidence?

(2) Did the juvenile court err by admitting the States [sic] Exhibit 2?

FACTS AND PROCEEDINGS

On August 31, 2014, a group of high school students, including Cody and Zachary, attended a party where large amounts of alcohol was served. Zachary consumed “a lot” of alcohol at the party and, by approximately eleven o’clock in the evening, Zachary had fallen asleep in a chair. Zachary woke up to being sprayed by Cody with some type of liquid from a spray bottle.² Zachary attempted to take the spray bottle from Cody and the two engaged in an altercation, during which Cody punched Zachary in the jaw. The following day, Zachary sought medical attention and it was determined that his jaw had been fractured in two places. As a result, Zachary needed to have a metal plate surgically implanted to allow the jaw to heal properly. Zachary’s jaw was wired shut for five-six weeks, after which he had a second surgery to remove the wires.

On October 7, 2014, Zachary and his mother reported the incident to the Baltimore County Police. Zachary filed a complaint for restitution on December 29, 2014, seeking restitution in the amount of \$1,492.61 for medical expenses and \$6,400.00 in lost earnings. At the February 19, 2015 adjudicatory hearing, Cody admitted to punching Zachary but argued that he had been provoked. The court found, beyond a reasonable doubt, that Cody unlawfully assaulted Zachary.

² Zachary believed the bottle contained some type of cleaning product. He referred to the bottle as a Lysol bottle.

The disposition and restitution hearing was originally scheduled for March 18, 2015 but was postponed until April 29, 2015. At the restitution hearing, the family magistrate heard testimony about Zachary’s medical treatment and various medical expenses, including co-pays, chiropractor charges, visits to the dentist, and parking expenses, among others. The court heard further testimony regarding Zachary’s lost earnings. Zachary testified that he had been scheduled to participate in a work-study program at Roseda Farm for the duration of the 2015-2016 school year, through which he would have earned \$6,400 over the course of the school year. Zachary testified that he was unable to complete the work-study program because the vibrations from the farm machinery would damage his healing jaw. Zachary testified that it was not his decision to cease participation in the work-study program.³ Zachary missed approximately three weeks of school at the beginning of the 2014-15 school year following his injury. The work-study program was scheduled to begin on the first day of school.

Over Cody’s objections, the State introduced into evidence a letter from Marcia Bryant, officer manager of Roseda Farm (“the Roseda Farm letter”). The Roseda Farm letter provided the following:

³ Zachary attempted to testify that his doctor had told him not to participate in the work-study program, but the court sustained defense counsel’s objection to Zachary’s comment about what his doctor had said.

To Whom this May Concern:

Zachery [sic] [F.] was an employee of Roseda Farm starting in August 2014. Zachery was going to be on the work study program at Hereford High School and would have continue[d] working at Roseda Farm for the 2014/2015 school year. Zachery would have worked approximately 20 hours a week for approximately 40 weeks. Zachery would have made \$6,400 if he would have continued at Roseda Farm.

Sincerely,

Marcia Bryant

Office Manager

The family magistrate recommended awarding \$1,489.61 for medical expenses but did not include any amount for lost earnings. The magistrate was persuaded that Zachary had planned to work at Roseda Farm, explaining: “I believe they had that job set up for the year. Eight bucks an hour, twenty bucks a week, forty weeks. And that plan was in effect. I don’t have a problem with that.” The magistrate further explained that he was persuaded of the existence of the intended employment based upon the oral testimony alone and that the letter was not necessary for him to reach his conclusion. Despite the fact that the magistrate believed that the plan was in place for Zachary to participate in the work-study program, he declined to award restitution for lost wages. The magistrate explained that the \$6,400 in lost earnings was speculative because there was nothing to establish how long Zachary would have otherwise continued to work in the work-study program or that he was unable to find other employment. The magistrate further explained that the loss “certainly had not yet occurred.”

The State filed exceptions to the restitution award and a hearing was held on the State's exceptions on June 15, 2015 before a judge of the Circuit Court for Baltimore County, sitting as a juvenile court. The court expressly found that the State had established that Zachary was unable to participate in the work-study program due to the assault by Cody. Defense counsel argued that the lost wages claim was speculative because it was for future wages and there was "no certainty that Zach[ary] would have stayed at the same job [or] that the employer would have kept paying him the same wage." The court commented that Zachary's lost wages claim was not any more speculative than any other lost wages claim, inquiring, "[W]ouldn't that be the argument on any claim for lost wages, that the person could have been fired, they could have quit, they could have left for another employment?" The court reasoned that this argument would be presented with respect to any lost wage claim under the restitution statute.

The court further pointed to Zachary's testimony as evidence that Zachary was unable to work due to the assault, commenting:

[Y]ou've got his testimony that the job required him to work, to operate machinery, that the machinery involved vibrations and that the vibrations from the machinery would adversely impact the healing of his jaw. That's, that was his testimony as to why he would be unable to work.

The court issued its ruling as follows:

I do think that the Master and find that the Master^[4] was clearly erroneous in finding that an Order of lost earnings in this case was speculative. The victim in the case had been employed by this employer at the rate of \$8.00 an hour. That [the Roseda Farm letter] clearly demonstrates that the employer was offering continued employment to the victim, Zachary [F.], for the entire school year that he was enrolled at Hereford High, beginning in September, or they have August of 2014 for a period of forty weeks. There's nothing in the testimony in the transcript that as of the date of the hearing in front of Magistrate McAllister, which was April the 29th of 2015, that at any point in time he was able to go back to work. I'll reduce the claim based on the fact that at least through April the 29th he was unable to work, so I'm going to give him the four months of April, through April, from the beginning of the year, and the four months from the beginning of September through the end of the year. So that's eight months times 4.3 weeks. I'm going to find that's thirty-two weeks, at a minimum, at \$8.00 an hour, times twenty hours a week, so I have \$640 times eight hours, \$8.00 rather is his lost wage claim, which I total at being \$5,120. I'll give the Defendant the further benefit and round the number down to \$5,000 and enter an Order in the case. Restitution for lost wages against the Respondent and the parent in the amount of \$5,000 and reduce that to an Order.

This timely appeal followed.

STANDARD OF REVIEW

We review a trial court's restitution order applying an abuse of discretion standard. *Wiredu v. State*, 222 Md. App. 212, 228, 112 A.3d 1014, 1023 (2015) (“The decision to order restitution pursuant to [Md. Code (1974, 2013 Repl. Vol., § 11-603 of the Courts and Judicial

⁴ Effective March 15, 2015, the title “Master for Juvenile Causes” was changed to “Family Magistrate.” Md. Rule 1–501. It appears that the circuit court judge inadvertently misspoke when referring in this lone instance to the magistrate as a master.

Proceedings Article (“CP”),] and the amount lie within the trial court’s sound discretion and we review the trial court’s decision on the abuse of discretion standard.”) (citing *Silver v. State*, 420 Md. 415, 427 (2011)).

DISCUSSION

Cody asserts that the trial court’s restitution order was improper for two reasons. Cody asserts that the magistrate erred by admitting the Roseda Farm letter. Cody further asserts that the court’s restitution order was an abuse of discretion because the lost earnings were not a direct result of Cody’s delinquent act. We are unpersuaded by either of Cody’s allegations of error.

I. The Roseda Farm Letter

Cody asserts that the magistrate erred by admitting the Roseda Farm letter because the letter contained unreliable inadmissible hearsay. We disagree.⁵

Cody acknowledges, as he must, that the rules of evidence do not strictly apply to juvenile restitution hearings. *See In re Delric H.*, 150 Md. App. 234, 248 (2003) (“We hold that a juvenile court has the discretion, in the interest of justice, to decline the strict application of the Maryland Rules of Evidence . . . in a restitution hearing.”). Cody argues,

⁵ It is somewhat unclear whether this issue is properly before us, although the State has not raised any issue with respect to preservation. The admissibility of the Roseda Farm letter was argued before the magistrate but does not appear to have been argued before the circuit court judge. Nonetheless, because the circuit court particularly commented upon the Roseda Farm letter, and because, in our view, the letter was clearly admissible, we shall address the substantive issue rather than wade into a procedural thicket regarding preservation.

however, that the Roseda Farm letter is inherently unreliable and should not have been admitted. “[E]ven though a court may decline to require a strict application of evidentiary rules [in a juvenile restitution hearing], there still exists an inherent reliability/credibility requirement which a proponent of the offered evidence must satisfy.” *Id.* at 248-49.

In this case, the information contained in the Roseda Farm letter was corroborated by the testimony of Zachary and Zachary’s father. Zachary and his father testified that Zachary had previously worked at Roseda Farm during the summer of 2014, that Zachary was scheduled to participate in a work-study program at Roseda Farm in an arrangement with Hereford High School for the duration of the 2014-15 school year, and that Zachary was scheduled to work twenty hours per week and be paid \$8.00 per hour. This corroborative testimony supported the reliability of the Roseda Farm letter.

Zachary’s father further testified about how he obtained the letter. Zachary’s father explained that he asked Zachary’s “boss” at Roseda Farm for “something in writing to confirm that he was to be part of [the work-study] program.” Although Zachary’s father’s explanation for how the letter was obtained would not satisfy any exceptions to the rule against hearsay, it does provide additional context and reliability to the document. Accordingly, because the testimony established the circumstances under which the letter was obtained, and because the testimony corroborated the contents of the letter, we hold that the Roseda Farm letter was sufficiently reliable to satisfy the relaxed evidentiary standard applicable to a juvenile restitution hearing.

Furthermore, even if we were to assume *arguendo* that the letter was improperly admitted, the magistrate expressly commented that the letter was irrelevant to his determination of the facts. Although the magistrate ultimately concluded that restitution for lost wages was speculative, he explained that he was persuaded of the details of Zachary's planned participation in the Roseda Farm work-study program based upon the testimony alone. The magistrate explained that he "th[ought] the oral testimony [regarding the details of the work-study program was] sufficient without the letter" and told defense counsel, "I don't think you need [the letter]." The magistrate's comments clearly indicate that sufficient evidence existed elsewhere in the record to support the factual determination as to the details of the work-study program. As such, any alleged error relating to the admission of the letter would be harmless.

II. Lost Wages

Cody further asserts that the award for Zachary's lost earnings was improper. Specifically, Cody argues that there was no evidence presented of Zachary's inability to earn wages during the entire 2014-2015 school year and that the loss of earnings beyond the three-week period during which Cody was absent from school was not a "direct result" of the assault. As we shall explain, we are unpersuaded.

Restitution for lost earnings is authorized by Md. Code (2001, 2008 Repl. Vol.), § 11-603(a)(2)(iii) of the Criminal Procedure Article ("CP"), which provides in relevant part:

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) as a direct result of the crime or delinquent act, the victim suffered . . . (iii) loss of earnings.

“In Maryland, juvenile courts have ‘broad discretion to order restitution, either against the juvenile himself, a parent, or both.’” *In re Delric H.*, *supra*, 150 Md. App. at 249 (quoting *In re John M.*, 129 Md. App. 165, 189 (1999)). “A victim is presumed to have a right to restitution” for lost earnings if “the court is presented with competent evidence” of the lost earnings. CP § 11-603(b). *See also Chaney v. State*, 397 Md. 460, 471 (2009) (“CP § 11-603(b) creates a presumption that [a victim] is entitled to [restitution], provided that ‘the court is presented with competent evidence’ of the items for which restitution is sought.”). “[A] victim’s entitlement to a restitution award and the amount of the award are facts that the State must establish by a preponderance of the evidence.” *Juliano v. State*, 166 Md. App. 531, 540 (2006).

In the present case, the trial court found, based upon the evidence presented, that, as a direct result of Cody’s assault, Zachary was precluded from participating in the work-study program at Roseda Farm. Zachary testified that it was not his decision to withdraw from the work-study program. Zachary further testified as to the reasons he was unable to work at Roseda Farm, explaining that the vibrations from the farm machinery would disrupt his jaw, which was healing from two separate surgical procedures. Indeed, Zachary testified that his jaw was “still a little messed up” in February of 2015, nearly six months after Cody’s assault. The testimony of Zachary’s father as well as the Roseda Farm letter corroborated Zachary’s

testimony and provided further support for the trial court’s determination. The testimony and documentary evidence presented at the adjudicatory hearing constituted competent evidence upon which the trial court reasonably concluded, by a preponderance of the evidence, that Zachary’s lost earnings were the direct result of Cody’s assault.

Furthermore, we are unpersuaded by Cody’s attempts to tie together the period of time Zachary was required to be absent from school and the period of time during which Zachary would have been precluded from working at Roseda Farm. Zachary’s ability to participate in the work-study program was simply unrelated to his ability to attend school. First, we note that although Zachary missed only three weeks of school, his jaw was wired shut for between five and six weeks. Zachary continued to require medical care, including chiropractic treatment, physical therapy, dental treatment, and appointments with a plastic surgeon for months following the date he returned to school. It is plain that Zachary’s jaw could have been in a condition which would allow him to participate in the sedentary activities inherent in attending school, such as sitting at a desk and completing school work, while still not allowing him to work on a farm, where Zachary’s responsibilities included running a tractor, operating a weed whacker, and using other farm equipment.

Cody asserts that there was no evidence demonstrating that the lost earnings throughout the entire school year was the “direct result” of the assault and speculates that the lost earnings were at least partially caused by “possible limitations of the work-study program” or “possible failure of Zachary or the school to pursue other work-study

opportunities.” To be sure, it is possible that additional evidence would have provided further support for the trial court’s conclusion. On appeal, however, our task is not to consider additional ways in which the State could have bolstered the restitution claim. Rather, we consider whether there was *competent evidence* to support the trial court’s determination. In our view, the State presented competent evidence in this case from which a fact-finder could determine that Zachary was entitled to restitution for lost wages.

We note, however, that this is a very close case. The record permits our conclusion, although just barely. We comment on this specifically in order to caution trial judges and attorneys to ensure that an appropriate factual foundation has been established to support a restitution award. In this case, it seems likely that the restitution award would have had even stronger factual support had more specific questions been asked at the restitution hearing, such as those relating to the issues of precisely when Zachary would have been medically cleared to work at Roseda Farm, and whether it was permissible for a student to join the work-study program part-way through the school year. Nevertheless, given the significant discretion afforded to trial judges in the context of restitution hearings, as well as the competent evidence presented below, we are persuaded that the restitution award is supported by sufficient competent evidence. Accordingly, we affirm the restitution awarded for Zachary’s lost wages.

**JUDGMENTS OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**