Circuit Court for Montgomery County
Case No. 6-J-15-932

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1260

September Term, 2016

In re: J.T.

Wright,
Graeff,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 7, 2017

In January 2016, J.T., appellant, was charged by delinquency petition with various offenses in connection with an arson that occurred in a neighborhood near his house. After a trial in the Circuit Court for Montgomery County, the court concluded that J.T.'s friend, A.G., had started the fire by himself, and that J.T. was involved as an accessory after the fact when he tried to cover up the arson. At a subsequent restitution hearing, the court found that J.T.'s actions facilitated additional damages to the victim's house and ordered him to pay $10,000 in restitution.

J.T. appealed, and, in our view, presents one question for our review:

> Did the trial court abuse its discretion when it ordered J.T. to pay restitution?[1]

For the following reasons, we answer yes and reverse the restitution judgment ordered by the circuit court.

BACKGROUND

On October 28, 2015, a fire caused substantial damage to a house located on Falconcrest Circle in Germantown. On January 4, 2016, J.T. and his co-defendant, A.G., were charged in connection with the fire. J.T. was thirteen years old at the time. The two boys were charged with First Degree Arson, Conspiracy to Commit First Degree

[1] In his brief, appellant asks his question in two parts:

> A. Did the trial court err when it [ ] ordered restitution for damages that were not directly caused by [J.T.'s] actions?
>
> B. Did the trial court err when it ordered restitution when the State failed to meet its burden of proof regarding the correct amount of restitution?

Arson, Second Degree Arson, Conspiracy to Commit Second Degree Arson, First Degree Malicious Burning of Personal Property, Conspiracy to Commit First Degree Malicious Burning, Malicious Destruction of Property Valued at Over $1,000, Conspiracy to Commit Malicious Destruction of Property Valued at Over $1,000, Second Degree Malicious Burning, Conspiracy to Commit Second Degree Malicious Burning, Reckless Endangerment, and Conspiracy to Commit Reckless Endangerment. On March 14, 2016, the State amended the charges to add a charge of Accessory After the Fact to J.T.'s charges.

A trial on the charges was held over the course of three days from March 3 through April 11, 2016. The testimony adduced at trial revealed the following facts. Michael R. was the owner of the house located on Falconcrest Circle. On October 28, 2015, the fire department received a call about a fire at Michael R.'s house at 4:41 p.m. First responders arrived at the scene at 4:47 p.m. Michael R. later arrived home to find his house on fire and surrounded by approximately ten fire trucks. Michael R. testified that his house was worth about $700,000, with $150,000 worth of items inside the home. The deck of the house sustained heavy charring, the fire consumed one-third of the roof, and the basement was covered in smoke and soot. According to Michael R., there was a lawnmower and gasoline can located in the shed behind his house. Lieutenant Greg Junghans testified that various signs indicated that this was an intentional fire. The next day, Lieutenant Junghans concluded that the fire was intentional when he received information about the involvement of J.T. and A.G.

J.T. testified and provided the following explanation for the fire.[2] J.T. told the court that on the day of the fire, he and A.G. were playing outside J.T.'s home after school. J.T. was playing a game on his phone and lost track of A.G. until he found A.G. standing between two houses. J.T. asked A.G. what he was doing, to which A.G. responded, "Don't worry about it." A.G. found gasoline in the shed behind the house on Falconcrest Circle and poured it into a bottle. Gas spilled onto the ground as he poured it into the bottle. J.T. told him to stop, but A.G. ignored him and lit the spilled gas with a lighter. J.T. claimed that he saw a "big whoosh" of fire and then ran away. The boys ran to a friend's house nearby and washed their hands.[3] Afterwards, J.T.'s uncle drove them home. During the ride home, the boys discussed the fire by texting each other in the Notes application while passing a phone back and forth. In the text messages, J.T. stated that A.G. had set the house on fire and that he was worried about them going to "juvy." J.T. also said that he felt guilty about the fire. A.G. told him to calm down, not to tell his mother about what happened, and to delete the texts. These messages were deleted, but later recovered.

On the day after the fire, investigators visited J.T. at his house and spoke with him. By the end of the interview, J.T. gave them a signed statement. The State would later

[2] Both J.T. and A.G. testified at trial and presented differing explanations for the cause of the fire. The court found that J.T.'s testimony was more credible and based its findings on that testimony. Accordingly, we use J.T.'s testimony to provide the factual background for the case.

[3] The friend testified that both A.G. and J.T. washed their hands. J.T. claimed that he did not wash his hands.

argue that J.T.'s statement to the investigators differed in some aspects from the testimony he gave at trial. The next day, J.T. asked them to return for a second interview where he led investigators to a set of bushes and showed them the plastic bottle that A.G. had used.

On April 13, 2016, the court issued its ruling finding J.T. not involved on counts one through twelve; however, the court found J.T. involved on count thirteen, Accessory After the Fact. The court determined that J.T.'s testimony was more credible than A.G.'s, and believed that J.T. was following A.G.'s lead. The judge concluded that J.T. was an accessory after the fact because he helped A.G. clean his hands, texted about covering up evidence, and lied to the investigators when they first spoke to him on the day after the fire.

At the restitution hearing on August 15, 2016, the court ordered J.T. to pay $10,000 in restitution. J.T. filed his notice of appeal that same day.

DISCUSSION

"Maryland law confers upon a juvenile court broad discretion to order restitution. The juvenile court may order restitution against the child, the parent or both." *In re Don Mc.*, 344 Md. 194, 201, 686 A.2d 269, 272 (1996). J.T. argues that the court abused its discretion by ordering restitution, because he did not directly cause the damages in this case. A court may enter a judgment of restitution for the commission of a delinquent act, "if *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." Md. Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("CP"), § 11-603(a)(1) (emphasis added). Therefore, an individual may only be held liable for restitution when his or her criminal activity *directly* caused some form of damage.

The issue before this court is whether J.T.'s delinquent acts directly caused any of the damages. J.T. was charged with a variety of crimes, but was ultimately only found involved as an accessory after the fact. As a result, we can only consider his involvement as an accessory after the fact when considering restitution. At the conclusion of the trial, the court stated the following when it made this finding:

> Based on the contradictory testimony while I might suspect that [J.T.] is more involved than the proof supports that suspicion is definitely not beyond a reasonable doubt.
>
> I'm not convinced beyond a reasonable doubt about either version up to [and] including the lighting of the fire but mere presence isn't enough to find involvement. However, while it is likely true that [J.T.] did not understand that he was becoming an accomplice after the fact, that is what he became as he tried to plan and protect himself and [A.G.]. **However, he was the one who ran to [his friend's] to get the soap to hide the evidence. He knew where the bottle had been thrown. He collaborated on the cover up [of] evidence by text and notes. Lied when first spoke to the Fire Marshals but fessed up because his [sic] kept working on him.**
>
> The fire was set. [J.T.] knew it had been set. He admits he saw it done. **He assisted [A.G.] in both the execution, the soap and the planning of the text with the intent at the very least to hinder the investigation post fire.** So taking all of this into account, I find by reasonable doubt that the respondent is involved in Count 13, accessory after the fact.

(Emphasis added).

At the restitution hearing, the State argued that J.T. was liable for damages

because

> He first saw the fire started by [A.G.], he didn't attempt to put it out, he didn't call 9-1-1. He then helped [A.G.] hide the bottle of gasoline. They then went to get soap at a friend's house and no request was made of that friend to call 9-1-1. He then harbored [A.G.] at his home, they changed clothes, he didn't tell his mother, he didn't call 9-1-1 at that point and because of this it took longer for fire and rescue to arrive at the home of [Mr. R.], therefore facilitating additional damages.

The defense countered by arguing that J.T. had not been convicted of any charge related to the actual setting of the fire. The court agreed with the State and ordered the maximum restitution amount of $10,000. The court explained its ruling, stating:

> **You weren't found involved in any of the counts that were related to starting the fire, but you were there. You most certainly participated in hiding the story from the authorities** and were it not for your mom, I believe, you would have continued to do so. That led to a lot of work by a lot of people that was perhaps unnecessary. You ultimately showed them what you needed to show them but why you showed them that, how you were able to show them that, was because you were involved with putting those things there. **You went and found a friend who would give you all soap so you could wash your hands. You watched where something got tossed so that you can go back and show where it was.** You participated in this process and I'm real clear that what I said at the time that I made the ruling was that it's possible, I think maybe even likely, that you were more involved in it than I could find.
>
> **But the truth is that you were there when the fire was lit and you ran away instead of running next door and saying call the fire department, do something, and you didn't take responsibility until basically your mom made you.** So, under all of the circumstances I think that the finding of involvement to the final count is sufficient to support an award of restitution.

(Emphasis). As the court noted, J.T. was not found involved in the starting of the fire.

He was an accessory after the fact because he "participated in hiding the story from the authorities."

The issue before this Court is whether any of these actions directly caused any damage to the house. Although courts possess broad discretion when imposing restitution, it is not without limits. In *Pete v. State*, 384 Md. 47 (2004), the defendant was convicted of both second-degree assault and an unrelated act of reckless driving. These crimes involved two different victims and occurred about two hours apart. *Id.* at 51-52. At sentencing, the trial court ordered, as a condition of probation for the assault conviction, restitution for damages directly resulting from the reckless driving. *Id.* at 52. On appeal, the Court held that restitution could not be imposed as part of the sentence for his assault conviction, because the damage caused was the direct result of his reckless driving, not his assault. *Id.* at 61. In *Williams v. State*, 385 Md. 50 (2005), the defendant, Williams, was convicted of stealing four motorcycles. Although all four motorcycles were recovered by the police, only one of them was returned to the victim, Jones. *Id.* at 52. The Baltimore City impound lot would not return the other three motorcycles to Jones because he had failed to properly title them. *Id.* Because Jones could not recover his motorcycles, the trial court ordered Williams to pay restitution in the amount of the lost property. *Id.* at 54. The Court of Appeals reversed and held that Williams did not have to pay restitution, explaining that:

> Jones's inability to reclaim the undamaged motorcycles was not the direct result of Williams's theft of them. 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, Jones's failure to produce proof of ownership to secure release of the vehicles is in no way a direct result of their underlying theft.

Id. at 62.

Case law addressing the specific issue of whether an order of restitution is appropriate when the underlying offense is for accessory-after-the-fact is scarce; however, it was addressed by the Fourth Circuit in *United States v. Squirrel*, 588 F.3d 207 (4th Cir. 2009). In *Squirrel*, the defendants were convicted of being accessories-after-the-fact to a first-degree murder. *Id.* Although they did not actively participate in the murder, the defendants drove the murderer away from the scene of the crime, hid the murder weapon, and joined the murderer in fabricating a story about the victim's whereabouts. *Id.* at 214. The trial court concluded that "[t]hese actions of [the defendants] deliberately obstructed the murder investigation by authorities and delayed the apprehension of [the murderer]. The Court, therefore, finds that [the defendants], as accessories, are liable for full restitution to [the victim's] estate" for lost future income and wages. *Id.* The Court of Appeals held that the trial court erred in holding the defendants liable for restitution to the victim's estate, because their criminal activity occurred after the murder, and "did nothing to cause or increase the financial harm to [the victim's] estate." *Id.* at 215.

The instant case falls in line with the above-discussed cases in which the defendants' conduct did not directly cause any financial harm to the victims. According to statements made by the court at the trial and restitution hearing, J.T. was found to be

an accessory-after-the-fact because he took A.G. to a friend's house to wash his hands, deleted text messages about starting the fire, lied to the fire marshals when initially questioned, and failed to alert the neighbors about the fire. We fail to see how any of these actions directly caused any financial harm to the victim.

J.T. helping A.G. wash his hands after the fire only served to cover up A.G.'s involvement in the fire. In no way did A.G. washing his hands lead to any further damages. As for the false statements to the fire marshals, they were made the day after the fire and had no effect on the damages. This same reasoning also applies to J.T. deleting the incriminating texts in his phone between him and A.G. This was only an attempt to cover up their involvement in the crime, and did not contribute to any damages. As the trial court itself said, J.T. committed these acts with the intent "to hinder the investigation post fire." (Emphasis added). Similar to the defendants in *Squirrel*, J.T. was an accessory after the fact who did not cause or increase financial harm to the victim.

The final reasoning given by the trial court for ordering restitution was J.T.'s failure to alert the neighbors to call 911. Hypothetically, it is possible that had J.T. alerted neighbors about the fire immediately, it could have led to a faster response time from the fire department, which in turn could have led to the fire being extinguished earlier.[4] Nevertheless, as defense counsel argued before the sentencing court, such a

[4] Although there was testimony that the fire department first received a call about the fire at 4:41 p.m., the actual timing of the start of the fire is unknown.

claim is still "pure speculation." Moreover, the failure to report a crime to authorities is not criminal activity. *See Pope v. State*, 284 Md. 309, 351 (1979). Accordingly, J.T. had no duty to alert authorities about the crime. Given that this is not criminal conduct, it may not be relied upon to impose restitution.

While there is no *per se* rule against holding an accessory after the fact liable for restitution, there must be some evidence that the victims' losses were directly caused by the specific conduct for which the defendant was convicted. In the instant case, there is no evidence that the actions that made J.T. an accessory after the fact caused any of the damages to the house. Accordingly, there was no basis on which to impose restitution.

JUDGMENT OF RESTITUTION OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. COSTS TO BE PAID BY MONTGOMERY COUNTY.