

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1830

September Term, 2013

IN RE: KAMEREN C.

Graeff,
Arthur,
Thieme, Raymond T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 18, 2017

Kameren C., appellant, entered a plea in the Circuit Court for Prince George's County, sitting as a juvenile court, of "involved" to a charge of delinquent conduct that, if committed by an adult, would have constituted second-degree assault. At the conclusion of the disposition hearing on October 7, 2013, the court committed Kameren to the Department of Juvenile Services ("DJS") for a level B placement and ordered Kameren and his parents, Shannon C. and Kenneth B., to pay \$7,688 in restitution.¹

On appeal, Kameren and his parents present six questions for our consideration, which we have rephrased slightly, as follows:

1. Did the juvenile court err in denying a postponement of the restitution proceeding based on a discovery violation and Kameren's parents' request for counsel?
2. Did the juvenile court err in imposing a judgment of restitution in the absence of reasonable notice and opportunity to respond?
3. Was the order and judgment of restitution impermissible where Kameren was advised by the trial judge at the time of his plea that the consequence of his plea was that he could be committed to a juvenile facility until he reached the age of 21?
4. Did the juvenile court err in ordering restitution where the record failed to establish that the damage to the victim was the direct result of the delinquent act?
5. Did the juvenile court err in imposing restitution against Kameren and his parents absent evidence or inquiry regarding the ability to pay?

¹ Because the order of restitution that is the subject of this appeal was entered against Kameren and both of his parents, all three are parties to this appeal. *See In re Levon A.*, 124 Md. App. 103, 125-26 (1998), *rev'd on other grounds*, 361 Md. 626 (2000); *In re Jason W.*, 94 Md. App. 731, 732 n.1, *cert. dismissed as improvident*, 332 Md. 509 (1993); *In re James B.*, 54 Md. App. 270, 278 (1983). The Office of the Public Defender states in its brief on appeal that "this brief is being filed on behalf of Kameren C. and his parents."

6. Did the juvenile court erroneously deprive Ms. C. of her right of allocution?

For the reasons set forth below, we shall vacate the order of restitution against Kameron and his parents and remand for a new restitution hearing.

FACTUAL AND PROCEDURAL BACKGROUND

Kameron was charged in a juvenile delinquency petition with acts that, if committed by an adult, would have constituted robbery, theft, and second-degree assault. At an adjudication hearing on August 28, 2013, Kameron entered an admission of involvement to the allegation of second-degree assault.² The parties agreed that the following factual allegations in the juvenile petition provided the predicate for Kameron's admission:

On or about 2013-08-05, at 10200 Campus Way South Upper Marlboro, Maryland 20774, Prince George's County, the victim, Antonio W., was walking when a four door blue and gray car pulled [up] to him and stopped. The Respondent, Kameron C., exited the vehicle and approached him. The Respondent punched the victim with a closed fist to the face which resulted in injuries to the victim[']s mouth. While the victim was on the ground the Respondent removed the victim[']s blue "Candy Skull" earphones with an approximate value of \$125.00 and a pair of blue Nike Foamposite tennis shoes having a value of \$175. All events did occur within Prince George's County.

² Maryland Rule 11-107(b) provided then, as it does now:

b. **Uncontested responsive pleading.** If a respondent child has filed a pleading admitting the allegations of a juvenile petition or indicates to the court his intention not to deny those allegations, the court, before proceeding with an adjudicatory hearing, shall advise the child of the nature and possible consequence of his action or intended action. The court shall neither encourage or discourage the child with respect to his action or intended action, but shall ascertain to its satisfaction that the child understands the nature and possible consequences of failing to deny the allegations of the juvenile petition, and that he takes that action knowingly and voluntarily. These proceedings shall take place in open court and shall be on the record. If the respondent is an adult, the provisions of Title 4 shall apply.

The court accepted Kameren’s plea of involved to second-degree assault, and a predisposition investigation was ordered.

On September 25, 2013, a hearing was held on the State’s motion to postpone the disposition hearing. When asked about the “status of the restitution,” Kameren’s attorney stated that “there’s not going to be any restitution in this case.” Counsel for the State, who was standing in for the prosecutor assigned to the case, advised the court that her notes indicated there “should be a restitution hearing set for status.”

At a disposition hearing on October 7, 2013, Kameren’s attorney argued that the incident arose out of Kameren’s attempt to retrieve from the victim, Antonio W., property that belonged to him. The State disagreed, asserting that the property belonged to the victim, and it argued that Kameren attempted to take the victim’s property “in a manner that was extremely violent.”

Both DJS and Kameren’s mother, Ms. C., requested that Kameren be released to the custody of his mother. The State requested the court to commit Kameren to a Level B placement. Ms. C. testified that, although “two wrongs don’t make a right,” both the principal and vice principal of Kameren’s high school documented that the victim had stolen shoes from Kameren. Ms. C. claimed that, if Kameren was released to her custody, she would “be able to provide a therapist for [Kameren] one or two times a week,” arrange for him to meet with a psychologist once a month, and continue to have him meet every four to six weeks with a psychiatrist, who already was in the process of prescribing medication for him. Ms. C. explained to the court that she did not get therapy for Kameren

until recently because she had lost her job in pharmaceutical sales, and at that time, she did not “really feel that medication was the proper option” for him.

The court then asked the parties what was being done regarding restitution. Defense counsel stated that he “was just handed discovery,” and he requested “an opportunity to go through” it. The court did not respond to defense counsel’s request.

The prosecutor advised the court that the victim’s parents wished to speak. Immediately thereafter, the victim’s mother, Tonya W., testified that Kameron knocked out the front tooth of her 15-year-old son, Antonio W., and took his shoes and headphones. Antonio could not get an implant until he turned 19. Additionally, the bottom part of his jaw needed to be restructured, and his teeth were so damaged and chipped that he needed crowns on at least eight teeth. Tonya W. testified that there was “almost \$8,000 worth of damage to [her] son’s mouth so far,” which did not include “the orthodontic treatment that he needs or the oral surgery.”

After Tonya W.’s testimony, the court recessed for approximately two and a half hours. When the case was recalled, the judge again asked the parties what was being done about restitution. Defense counsel requested a continuance because he had received discovery from the State that day, including estimates, and he wanted an “opportunity to get [his] own estimates” to dispute the amounts claimed by the victim. Counsel stated that, from photographs that were produced, it appeared that the victim might have had some preexisting dental needs. The court responded that the need to obtain estimates was “not a basis” for a continuance and directed the State to call its first witness. Defense counsel

advised that Kameren’s parents wanted a continuance to obtain counsel. The Court responded: “Okay,” but it then directed the victim to the witness stand.

Antonio W. testified, over objection. He stated that he knew Kameren from high school. On August 5, 2013, the two boys were involved in an incident during which Antonio’s left front tooth was knocked out. As a result of that incident, Antonio had to wear “a denture for [his] front tooth” and needed additional dental work on his bottom teeth.

Tonya W. gave additional testimony. On the day after the incident, she took Antonio to a dentist, but the dentist could not treat him because his lips and gums were too swollen. On August 7 or 8, she took Antonio to a dental practice in Greenbelt. A dentist recommended that Antonio receive an implant when he reached the age of 19. In the meantime, Antonio was given a “flipper,” advised to return to the dentist every three or four months, and referred to an orthodontist for the repair of several bottom teeth that were chipped during the incident. At the time of the hearing, Antonio had not yet met with an orthodontist. Ms. W. testified that she had received a proposed treatment plan, with a cost of \$7,688, for the flipper and the repair of Antonio’s teeth.³ That amount did not include the cost of future orthodontic treatment, oral surgery, or ongoing costs such as Polident, Efferdent, or appointments for replacement flippers as Antonio grows.

³ The treatment plan was admitted in evidence, but it is not included in the record before us.

DISCUSSION

Kameren and his parents challenge the juvenile court’s award of restitution on multiple grounds. Before addressing the individual claims, we discuss restitution generally.

Maryland Code (2008 Repl. Vol.) § 11-603 of the Criminal Procedure Article (“CP”) provides, in pertinent part, as follows:

(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) 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[.]

A victim is presumed to have a right to restitution 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.” CP § 11-603(b). A “written statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient evidence of the amount, fairness, and reasonableness of the charges and the necessity of the services or materials provided.” CP § 11-615(a). “A person who challenges the fairness and reasonableness or the necessity of the amount on the statement or bill has the burden of proving that the amount is not fair and reasonable.” CP § 11-615(b).

In a juvenile delinquency proceeding, the court may order a child respondent, the child’s parents, or both, to pay restitution. CP § 11-604(a); *see also* Md. Code (2013 Repl.

Vol.) § 3-8A-28 of the Courts and Judicial Proceedings Article (“CJP”) (a “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.”). For “each child’s acts arising out of a single incident,” the “absolute limit” of a judgment of restitution is \$10,000. CP § 11-604(b). A court need not issue a judgment of restitution if it finds that the child or liable parent “does not have the ability to pay the judgment of restitution” or “that there are extenuating circumstances that make a judgment of restitution inappropriate.” CP § 11-605(a)(1)-(2). “A court may not enter a judgment of restitution against a parent . . . unless the parent has been afforded a reasonable opportunity to be heard and to present evidence.” CP § 11-604(c)(1). *See also In re Don Mc.*, 344 Md. 194, 203 (1996) (juvenile court must conduct a reasoned inquiry into the respondent’s and parents’ ability to pay).

We review a juvenile court’s restitution order *de novo* for legal error as to the standards applied and for clear error as to any first-level findings of fact. *In re Earl F.*, 208 Md. App. 269, 275 & n.2 (2012); *In re Delric H.*, 150 Md. App. 234, 240 (2003). As to the ultimate decision to require a payment of restitution and the amount of that payment, we review that decision for an abuse of discretion. *Silver v. State*, 420 Md. 415, 427 (2011); *In re Delric H.*, 150 Md. App. at 240; *In re John M.*, 129 Md. App. 165, 175 (1999). A discretionary ruling generally will not be deemed an abuse of discretion unless it is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Cousins v. State*, 231 Md. App. 417, 438 (2017) (quoting *Evans v. State*, 396 Md. 256, 277 (2006)), *cert. denied*, ___ Md. ___, (May

22, 2017). With these standards in mind, we turn to the questions presented by Kameren and his parents.

The first two questions presented by appellants are closely related, and we shall discuss them together. First, Kameren and his parents contend that the juvenile court erred in denying their request for a postponement based on (1) the State’s failure to produce in a timely manner the victim’s treatment plan, which set forth the amount of restitution sought; and (2) Kameren’s parents’ request for a continuance to obtain counsel. They maintain that, without an opportunity to secure an expert to review the treatment plan, and absent an opportunity to obtain the victim’s prior dental records, they were “rendered defenseless to contest the requested restitution.”

Second, they contend that they did not have reasonable notice of, or an opportunity to respond to, the victim’s claim for restitution. They assert that they were not even aware that the victim claimed that his front teeth had been knocked out and other teeth chipped and that restitution for “dental damage” would be sought.

The record reflects that Kameren and his father received a copy of the juvenile delinquency petition.⁴ The petition alleged that Kameren “punched the victim with a closed fist to the face which resulted in injuries to the victims [sic] mouth.” According to the petition, “as a direct result of the delinquent act, [the victim] suffered a pecuniary loss in the amount not to exceed Ten Thousand Dollars (\$10,000.00). On the third page of the petition, there was a “Notice to Parents” that provided:

⁴ It is unclear whether Kameren’s mother ever received a copy of the juvenile delinquency petition.

You are advised that . . . you may be jointly or severally liable for damages up to Ten Thousand Dollars (\$10,000.00) resulting from the delinquent act of your child. You are further advised that the Court may at any stage of the proceeding, contemporaneously with the adjudicatory hearing or at [sic] disposition hearing, determine liability of the parent or parents and order restitution as a judgment in the amount determined by the Court not to exceed Ten Thousand Dollars (\$10,000.00) for each delinquent act. You have the right to retain a lawyer to represent you. You should be prepared to answer this complaint at the adjudicatory hearing of your child in the Juvenile Court.

Thus, the record reflects that Kameren and his father had notice that restitution might be sought.

Appellants contend, however, that the generic reference in the juvenile petition that Kameren and his parents may be liable for an amount not to exceed \$10,000 was neither particular nor specific enough to constitute adequate notice of the restitution being sought from them. They assert that the reference to Antonio’s mouth being injured could have referred to a mere swollen lip.

After the August 28, 2013, adjudicatory hearing, during which Kameren entered a plea of involved to second-degree assault, the court issued an order stating that a restitution hearing would be held on September 25, but it did not include any details about the type of injuries suffered by the victim or the amount of restitution sought. At this September 25, 2013, hearing, the State requested a continuance. During the hearing, the judge inquired as to the status of restitution. Defense counsel stated that “there’s not going to be any restitution in this case, is my understanding.” The prosecutor, who was standing in for the Assistant State’s Attorney assigned to the case, disagreed, stating: “The notes that I have, it should be a restitution hearing set for status.” The juvenile court continued the case to

October 7, 2013, for disposition and restitution. The court’s daily sheet indicates that Kameren’s “parents” were present in court for the hearing and that all parties were notified of the court’s ruling.

On October 7, 2013, the court held a disposition hearing. Kameren and his mother and father were present, and the court committed Kameren to a Level B placement and ordered Kameren and his parents to pay restitution.⁵

Although all of the parties were on notice or had been made aware that the State would be seeking a judgment of restitution, the record does not reflect that Kameren or his parents were notified of the specific amount of restitution being sought. We need not consider whether the general notice that restitution may be ordered in an amount not to exceed \$10,000 was sufficiently particular to apprise appellants of the specific restitution for dental damage that the victim was seeking because, even if the notice of restitution given to Kameren and his parents was adequate, it is clear that they were not afforded a meaningful opportunity to defend against the victim’s request for \$7,688 in restitution for dental damage.

Maryland Rule 11-109, which governs discovery in juvenile proceedings, requires the State, “without the necessity of a request by the respondent,” to furnish to the respondent “any book, paper, document, recording, photograph and any tangible object which the State intends to use at any hearing, in order to permit the respondent to inspect, copy, and photograph them.” Md. Rule 11-109(a)(3)(g). “All matters and information to

⁵ Although the docket entries and the court’s daily sheet indicate that “Child and Parent” consented to restitution in the amount of \$7,688, the record does not show such consent.

which a party is entitled must be disclosed in time to permit its beneficial use.” Md. Rule 11-109(c).

Although Rule 11-109 governs discovery in juvenile proceedings, the criminal counterpart to that rule, Md. Rule 4-263, provides us with guidance on evaluating that rule. *In re Caitlin N.*, 192 Md. App. 251, 271 (2010). In this regard, it has been noted that the general purpose of discovery rules is to “assist the defendant in preparing his defense and to protect him from surprise.” *Hutchins v. State*, 339 Md. 466, 473 (1995) (citations omitted).

In the criminal law context, the Court of Appeals has made clear that, as a matter of both constitutional due process and Maryland criminal procedure, an order of restitution 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 admissible evidence to support the request – evidence of the amount of a loss or expense incurred for which restitution is allowed and evidence that such loss or expense was a direct result of the defendant’s criminal behavior.

Chaney v. State, 397 Md. 460, 470 (2007).

The right to notice and an opportunity to defend against a request for restitution likewise applies to juvenile cases. In *In re James B.*, 54 Md. App. 270, 271 (1983), the juvenile pleaded involved to the offenses of “breaking with an intent to steal and malicious destruction of property.” The juvenile court found James B. involved, and *sua sponte*, it ordered him to pay \$331 in restitution. *Id.* James B. objected to the order of restitution, and at a subsequent restitution hearing, the court increased the amount of restitution to

\$451.55 and held James B. and his mother jointly and severally liable for that amount. *Id.* at 271-72.

On appeal, James B. argued that he did not have notice of the additional amount of restitution that was ordered at the restitution hearing. *Id.* at 278. We agreed and held that this offended basic principles of due process because James B. was entitled to both notice and an opportunity to be heard. *Id.* In addition to vacating the judgment for restitution and remanding the case for an evidentiary hearing to challenge the additional \$120 of restitution, we also vacated the restitution judgment as to James B.'s mother because she was never served with the juvenile delinquency petition, and as a result, she was not afforded due process. *Id.* at 279-80.

Here, the treatment plan setting forth the costs that provided the basis for the restitution, and other documents in support of the claim for restitution, were not provided to Kameren and his parents until the day of the restitution hearing. Defense counsel stated that he needed more time to review the documents, get estimates, and determine whether the costs involved damage that was a direct result of the assault, as opposed to preexisting dental needs. The two and a half hour continuance the juvenile court granted to allow for review of the documentation submitted in support of the claim for restitution was insufficient to give Kameren and his parents a reasonable opportunity to defend against the claimed expenses. Accordingly, they were denied due process, and we shall vacate the judgment of restitution and remand this case for a new restitution hearing.

At the new restitution hearing, the parents will have the right, if they desire, to obtain legal representation. *See In re Appeal No. 769 September Term, 1974 From Circuit Court*

of Baltimore City, 25 Md. App. 565, 571 (“A parent is entitled to representation by legal counsel at a hearing to determine that parent’s liability.”), *cert. denied*, 275 Md. 751 (1975). The court also should determine whether the dental expenses were a direct result of the delinquent act, CP § 11-603(a)(2), and whether Kameren and his parents have the ability to pay, *see In re Levon A.*, 124 Md. App. 103, 145 (1998) (improper for a court to order restitution without basing that judgment on a reasoned inquiry into the defendant’s ability to pay), *rev’d on other grounds*, 361 Md. 626 (2000). And Kameren and his parents will have a right of allocution at this hearing on remand. *See In re Virgil M.*, 46 Md. App. 654, 657-58 (1980) (acknowledging juvenile’s right to allocution); CP § 11-604(c)(1) (“[A] court may not enter a judgment of restitution against a parent . . . unless the parent has been afforded a reasonable opportunity to be heard and to present evidence.”).

**RESTITUTION JUDGMENT VACATED.
CASE REMANDED TO THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY, SITTING AS A JUVENILE
COURT, FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY PRINCE
GEORGE’S COUNTY.**