

In the Circuit Court for Worcester County
Case No. 23-J-16-0077
In the Circuit Court for Anne Arundel County
Case No. C-02-JV-16-000664

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2053

September Term, 2016

IN RE: B.W.

Eyler, Deborah S.,
Wright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: August 23, 2017

*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.

We are concerned in this case with the propriety of an award for restitution entered against B.W., a juvenile, by the Circuit Court for Worcester County, sitting as a juvenile court. After a hearing on October 17, 2016, B.W. was adjudicated involved in a second-degree assault. A disposition hearing was held on November 7, 2016. B.W. was found to be a delinquent in need of treatment and placed on supervised probation with conditions. The court ordered restitution “jointly and severally” with “that amount to be determined by juvenile services.” This timely appeal followed.¹

B.W. presents the following questions for our consideration:

I. Did the juvenile court issue an illegal order of restitution when it delegated authority to the Department of Juvenile Services to set the amount of restitution?

II. Did the juvenile court err in ordering restitution for expenses which were not a direct result of the assault?

For the reasons set forth below, we shall affirm.

FACTS AND PROCEEDINGS

On June 11, 2016, Jamie Langley and her boyfriend, Sammy Zacharia, were attending a car show in Ocean City. While they were standing with friends on 29th Street near the Jolly Roger Amusement Park, a man who appeared to be intoxicated threw a sandwich at them. Both Langley and Zacharia thought it was funny and laughed. A group of people that included B.W. approached Langley and Zacharia and asked what they were laughing at. Someone in the group asked, “what are you guys starting with us?” Some of

¹ On November 7, 2016, after the adjudication and disposition, B.W.’s case was transferred, for purpose of probation supervision only, to the Circuit Court for Anne Arundel County.

the girls in the group, including B.W., ran toward Langley “very aggressively.” One of them, later identified as P.R., “got in [Langley’s] face,” pointed her finger, and accused Langley of having laughed. B.W. followed P.R. as she and a group of 4 to 5 other girls kicked Langley, grabbed her hair, pulled her to the ground, and punched her in the face. While Langley was bent over, B.W. hit her in the back. Langley tried to get away, but the group of girls followed her. Eventually, Langley made her way to a bicycle shop and the police were called. B.W. stayed at the scene of the incident. When the police arrived, Zacharia identified the girls who had attacked Langley, including B.W.

As a result of the attack, Langley suffered a broken blood vessel in one of her eyes, black eyes, and scratches and marks on her body. Her designer sunglasses were torn off in the fight and were never recovered. The key fobs for two of Langley’s vehicles were “slammed” to the ground and “crushed purposefully” so as to render them inoperable.

B.W. denied striking Langley. B.W.’s sister and a friend testified that B.W. only watched the fight and did not hit Langley. At the conclusion of the adjudication hearing, the juvenile court found the State’s witnesses to be credible and the defense witnesses not credible. The court found B.W. involved. The State requested that disposition be postponed, but asked the court to permit Langley to testify at that time with respect to her damages, as she was already present at the courthouse. The court asked if the defense was disputing the amount of restitution requested or only the liability, and defense counsel responded that B.W. was “disputing both.” The State acknowledged that it could not attribute Langley’s damages to any particular person involved in the attack, but explained that it was proceeding “under an accomplice liability theory.” The court permitted the

State to question Langley about her damages. She testified that the damages listed on her victim impact statement were correct. Langley claimed \$847, which was the purchase price of her designer sunglasses, which were lost during the fight. She acknowledged that the sunglasses had been given to her as a gift five years before the incident. She also claimed \$90 for an eye exam, \$120 for contact lenses, and more than \$300 to repair the damaged key fobs.

A disposition hearing was held on November 7, 2016, at which B.W. was represented by new counsel. The State asked the juvenile court to adopt the recommendations set forth in a social history report prepared by the Department of Juvenile Services (“DJS”)², and to require B.W. to make restitution “joint and several, with the Co-respondents in this matter that have yet to be tried.” The prosecutor advised the court that “this may be a matter in which we would have to have a restitution hearing.” Thereafter, the following occurred:

THE COURT: Well, do you know what the restitution is?

[THE STATE]: Yes, Your Honor. I was informed that – of the items and the amounts. There was a key fob that was broken in the amount of \$300. The victim had to get an eye exam in the amount of [\$]90, pay for contacts in the amount of [\$]120, and she had glasses that were broken in the amount of \$847.

THE COURT: Okay. Do you have any documentation as to those amounts?

[THE STATE]: I do not currently, Your Honor.

THE COURT: Okay. What is the total?

² The social history report prepared by DJS did not include a recommendation about restitution.

[THE STATE]: I apologize, Your Honor.

[DEFENSE COUNSEL]: Thirteen fifty, I believe, Your Honor; thirteen fifty-seven.

[THE STATE]: Yes.

Following that exchange, defense counsel addressed the court, stating, in part:

[DEFENSE COUNSEL]: Your Honor, we're asking the Court adopt the State's recommendation. We're asking the Court adopt the Department's recommendation, that recommendation being that Ms. W. be placed on a period of probation, ordered to complete – to attend, enroll in, be evaluated for and to engage with substance abuse treatment.

* * *

However, we are asking the Court to adopt the State's recommendation. I don't believe she has prior contacts with the Department of Juvenile Services. I'll note, in Section 9 it doesn't appear that she's ever been placed. Again, given the conduct that she was found to be involved with, the facts that were sustained in the adjudication, we – it's the defense's position that the recommendation of both the State and the Department is appropriate.

Defense counsel then addressed B.W.:

We're asking that the Court adopt the recommendation of a period of supervised probation with drug evaluation, testing and treatment as in the discretion of your Department of Juvenile Services case manager.

The juvenile court entered disposition in the case as follows:

THE COURT: Well, from what you've indicated, you were not the aggressor or the lead participant in this case. But as you found out, it doesn't make any difference. Once you decide to be a part of it, then you're just as responsible as the person that it may have been their idea, who may have been doing the majority of the action. You understand that?

[B.W.]: Yes, sir.

THE COURT: So what I will do – and if I didn't say it, I find she is delinquent and in need of treatment. I'm going to place you on supervised

probation with the special condition that you have a substance abuse assessment completed. If they determine that you need any counseling, you'll have to attend and complete that counseling. You'll be subject to random urinalysis. Any positive results are going to be sent to this Court, as well as the Motor Vehicle Administration. You need to attend school on a regular basis, which you've had trouble, apparently, in the past of doing. Also, you'll have to complete 25 hours community service on a schedule set by juvenile services. I will order restitution jointly and severally, and I'll leave that amount to be determined by juvenile services. And as a result of that restitution, I'll waive the costs at this time.

DISCUSSION

B.W. contends the order of restitution is illegal because the juvenile court impermissibly delegated to DJS the authority to set the amount to be paid by her.³ She argues that the delegation of authority violated her right to due process under the Maryland and federal constitutions because she “had no opportunity to litigate the amount of restitution she would be required to make.” According to B.W., it was not necessary to lodge an objection at the time the juvenile court ordered restitution and, in any event, defense counsel made clear at the adjudicatory hearing that she was disputing both liability and the amount of restitution. We disagree and explain.

A juvenile court may order restitution in a juvenile delinquency case 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.), § 11-603(a)(1) of the Criminal Procedure Article (“CP”). A victim is presumed to have a right to restitution if either the victim or the State requests restitution and the court is presented with competent evidence of any item listed in CP section 11-

³ We note that this appeal does not involve any claim with respect to B.W.’s parents.

603(a). CP § 11-603(b). For juvenile offenders, the amount of restitution is limited to \$10,000 “for each child’s acts arising out of a single incident.” CP § 11-604(b). The imposition of restitution against a juvenile offender should be consistent with the overall objective of the juvenile justice system, which is rehabilitation not punishment. *See Robey v. State*, 397 Md. 449, 459 (2007) (“Placing an insurmountable debt on a child offender necessarily defeats the rehabilitative purpose of imposing restitution in the first instance because the child may endeavor forever to satisfy the obligation without success.”). A juvenile court has broad discretion to order restitution and its decision to do so shall not be overturned absent an abuse of discretion. *In re Don Mc.*, 344 Md. 194, 201 (1996).

In support of her contention that the juvenile court impermissibly delegated to DJS the authority to set the amount of restitution to be paid by her, B.W. directs our attention to two cases, *Mason v. State*, 46 Md. App. 1 (1980), and *Richards v. State*, 65 Md. App. 141 (1985), both of which involved challenges to a trial court’s delegation of the authority to set restitution to the Department of Parole and Probation. In *Mason*, the defendant was convicted of embezzlement. She was given a suspended sentence and five years of supervised probation with the condition that restitution be made. During the sentencing hearing, evidence was presented concerning people, other than the victim, who had suffered losses at Mason’s hands. The court entered an order of restitution that, in effect, required Mason to make restitution to “all of the people that she personally cheated[.]” including, but not limited to, the victim in that particular case and other people mentioned at the sentencing hearing. *Mason*, 46 Md. App. at 5.

On appeal, Mason challenged the breadth of the restitution order, arguing that the restitution had to be limited to the losses established in the case from which the conviction arose. We agreed, holding that the order of restitution to the victim in the case from which the conviction arose was legal, but “the open-ended order to make additional restitution to a wide variety of ‘victims’ to be determined by the probation department and in amounts to be determined by the probation department exceeded the sentencing authority of the court.” *Id.* at 9. In light of that holding, we did not address Mason’s challenge to the delegation of authority to impose restitution to the probation department.

Several years later, in *Richards*, we were again presented with a challenge to a trial court’s decision to delegate to the Division of Parole and Probation authority to determine the amount of restitution. Richards was convicted by a jury of assault with intent to murder and assault and battery. He was sentenced to a twenty-five year prison term with five years suspended, and ordered to pay restitution within three years of his release from prison in the amount of the medical and hospital costs incurred by the victim.

On appeal, Richards argued that the order of restitution was illegal because the sentencing court failed to inquire about his ability to make restitution; failed to specify the amount of restitution, thereby denying him the opportunity to challenge the reasonableness of the amount; and illegally delegated a judicial function by directing the Division of Parole and Probation to determine the amount of the restitution. We declined to address the argument that the sentencing court failed to make an inquiry about Richards’ ability to pay restitution because no objection was lodged on that ground at the sentencing hearing and, as a result, the issue was waived. With respect to the other issues, we held that the

delegation of authority to the Division of Parole and Probation for the purpose of determining the amount of restitution “was an illegal delegation of the statutory authority of the court and a violation of the due process rights of the appellant.” 65 Md. App. at 149.

In reaching that conclusion, we specifically adopted the holdings of two cases from other jurisdictions, *Cothron v. State*, 377 So.2d 255 (Fla. Dist. Ct. App. 1979), and *Cox v. State*, 445 S.W.2d 200 (Tex. Crim. App. 1969). In *Cothron*, the Florida court held that it “was improper for the trial judge to delegate to the probation supervisor the authority to determine the amount of restitution the [defendant] must pay[,]” because the defendant was “entitled to a hearing before the trial court to determine the amount of restitution.” 377 So.2d at 255.

In *Cox*, the defendant was given a suspended sentence and placed on probation. 445 S.W.2d at 201. After his probation was revoked, he argued that the trial court was not authorized to revoke his probation for allegedly violating one of the conditions of his probation, which required that he “[m]ake restitution as and when directed by the probation officer[.]” *Id.* (internal quotation marks omitted). The appellate court affirmed the order revoking Cox’s probation on several grounds, but noted that the requirement to make restitution was “an unauthorized delegation of authority” to the probation officer. *Id.* In a concurring opinion, Judge Onion explained:

First, such condition was too vague and uncertain to authorize revocation. . . . the restitution condition did not direct payment of any sum, on any date, to anyone as a requirement. Second, as noted in the majority opinion, the condition involved an unauthorized delegation of authority by the court to the probation officer. *McDonald v. State*, Tex. Cr. App., 442 S.W.2d 386. Such unauthorized delegation of authority permitted the probation officer not only to determine a condition of probation but also

authorized him to alter or modify the condition from time to time as he deemed desirable without the approval of the court. A probation officer has no authority to alter conditions of probation. Only the court having jurisdiction of the case shall determine, fix, alter or modify the conditions of probation.

Id. at 202 (some internal citations omitted).

B.W. maintains that as in *Mason* and *Richards*, the juvenile court improperly delegated to DJS the authority to set restitution in violation of her due process rights because she had no opportunity to litigate the amount of restitution she would be required to make. She further asserts that although she failed to lodge an objection below on this ground, the juvenile court was aware of her opposition to the order of restitution because her attorney advised the court that she was disputing both liability and the amount of restitution. We are not persuaded.

Here, unlike in *Richards*, B.W. was afforded a hearing on restitution. That makes this case more like *Russell v. State*, 221 Md. App. 518, *cert. granted*, 443 Md. 234, *appeal dismissed*, 443 Md. 734 (2015), in which we considered a challenge to a sentencing court's decision to delegate to the Division of Parole and Probation ("DPP") the authority to impose a curfew as a condition of probation. *Id.*

Russell was convicted in two separate cases of child abuse and other crimes. In each case, he was sentenced to a term of imprisonment with all but time served suspended to be followed by a period of probation. While on probation in both cases, Russell's probation officers requested modifications to the conditions of probation, specifically the addition of Collaborative Offender Management Enforcement Treatment ("COMET") supervision. *Id.* Under COMET supervision, a team made up of members from various

agencies was permitted to take various actions, including requiring a probationer to submit to polygraph testing and imposing a curfew if a probationer declined to answer a question during a polygraph examination. After a hearing, the circuit court granted the probation officers' requests to modify both probations so as to add COMET supervision. The court authorized the COMET team to impose a curfew with allowances for such things as work, church, and doctor's appointments. The court deferred to DPP "to determine when it was appropriate to impose the curfew" and to "provide Russell with clear and specific rules indicating the circumstances under which the court-authorized curfew would be imposed." *Id.* at 529.

On appeal, Russell, relying upon *Richards*, challenged the modification of the terms of his probation on several grounds, including that the circuit court lacked the authority to delegate the power to impose a curfew. He acknowledged that the circuit court had the authority to impose a curfew as a condition of probation, but argued that the court could not delegate that authority to either DPP or the COMET team. We rejected Russell's argument, stating:

In *Richards, supra*, we held that the trial court did not have the authority to delegate the determination of the amount of restitution to the probationary authority. We held that it was a violation of the defendant's due process rights for the probationary authority to determine the amount of restitution without a hearing because the delegation "effectively denied appellant the right to be heard." *Id.* at 149, 499 A.2d 965. Unlike the defendant in *Richards, supra*, Russell had a hearing before the trial court issued an order permitting DPP to impose a specific curfew. Accordingly, we hold that the discretionary curfew imposed by the court and administered by the DPP does not constitute an illegal condition of probation.

Id. at 529-30.

At the adjudicatory hearing in the instant case, defense counsel advised the juvenile court that B.W. was disputing both liability for and the amount of restitution. The State acknowledged that it could not attribute the damages incurred by Langley to any particular person, including B.W., but made clear that it was proceeding “under an accomplice liability theory.” At the disposition hearing, B.W.’s new counsel did not challenge the State’s request for restitution or the amount of restitution sought. Even if we were to accept B.W.’s argument that the defense’s request for the court to adopt the State’s recommendation pertained only to the request that she be placed on a period of probation and the other recommendations set forth in the social history report prepared by DJS, the record clearly shows that the defense did not challenge the court’s conclusion that B.W. acted in concert with the other individuals who attacked Langley. Nor did the defense in any way contest B.W.’s liability for Langley’s damages, the court’s decision to order restitution, the amount of restitution requested by the State, or the decision to order restitution on a joint and several basis. Langley testified that she suffered \$1,357 in damages, and that amount constituted the maximum amount of restitution, which the juvenile court ordered. Because proceedings against other individuals involved in the assault on Langley had not been resolved, the juvenile court ordered that the restitution be paid by B.W. on a joint and several basis. Although the amount to be paid in restitution will not exceed \$1,357, B.W.’s precise liability will depend on how many other persons are adjudicated involved in the attack on Langley and ordered to pay restitution. That is the information that DJS will determine and provide to B.W. As B.W. was not deprived

of a hearing on restitution, we find no error in the juvenile court's decision to delegate to DJS the task of determining B.W.'s share of the \$1,357 in restitution.

II.

B.W. argues that the juvenile court erred in ordering restitution for expenses claimed by Langley that were not incurred as a direct result of her acts. She maintains that there were "'intervening agents' who committed the acts that directly resulted in the expenses for which the State sought restitution." This issue is not properly before us. At no time did B.W. object to the order of restitution or raise the issue of "intervening agents," nor did the court address it. Md. Rule 8-131(a).

Even if the issue had been preserved for our consideration, B.W. would fare no better. As the juvenile judge explained to B.W. at the disposition hearing, it did not matter whether she was a mere participant or the lead aggressor in the assault on Langley. "As a general rule, when two or more persons participate in a criminal offense, each is ordinarily responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom[.]" *Owens v. State*, 161 Md. App. 91, 104-05 (2005) (citation and internal quotation marks omitted). At the adjudicatory hearing, Zacharia identified B.W. as "one of the three girls, four girls, that were beating up Jamie, jumping her." He explained that the girls were "punching" and "kicking" Langley and followed her when she attempted to get away. When asked what specifically B.W. did, Zacharia stated that "[s]he was one of the girls hitting my girlfriend[.]" and that "they were hitting her and punching her in the face, in the chest. They were kicking her." Langley testified that B.W. hit her in the back, but also stated that "between all the girls, I'm not more confident as to

where else she got a hit in[.]” Langley’s physical injuries and the loss of, and damage to, her possessions occurred as the direct result of the assault perpetrated by B.W. and the others involved in the attack. Clearly, B.W.’s participation in the assault contributed to Langley’s being overpowered which resulted in her physical injuries and enabled others to take her sunglasses and damage her key fobs. Based on these facts, the juvenile court did not abuse its discretion in ordering B.W. to pay restitution jointly and severally as a condition of probation.

**JUDGMENTS OF THE CIRCUIT
COURT FOR WORCESTER
COUNTY, SITTING AS A JUVENILE
COURT, AFFIRMED; COSTS TO BE
PAID BY THE APPELLANT.**