Circuit Court for Baltimore City
Case Nos. 117075030 and 117075031

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2336

September Term, 2018

LESLIE LEWIS

v.

STATE OF MARYLAND

Berger,
Wells,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 14, 2020

At a December 5, 2017 hearing in the Circuit Court for Baltimore City, Leslie Lewis, appellant, pleaded guilty to one count of felony theft scheme in Case Number 1170750030 and one count of felony theft scheme in Case Number 1170750031. A sentencing and restitution hearing was held over the course of three days. Appellant was sentenced to concurrent terms of incarceration for five years, with all but 90 days suspended, followed by probation for a period of five years, and was ordered to pay restitution in the amount of $58,689.34. On March 2, 2018, appellant filed an application for leave to appeal which was granted.

QUESTIONS PRESENTED

Appellant presents the following questions for our consideration:

I. Did the sentencing court improperly impose restitution for crimes to which appellant did not plead guilty?

II. Did the sentencing court err in ordering restitution for items that were recovered and/or recoverable?

III. Did the sentencing court err in refusing to consider the complainant's insurance policy in determining the amount of restitution?

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

A. Agreed Statements of Fact

With respect to the felony theft scheme charge set forth in Case Number 1170750030, appellant pleaded guilty on a statement of facts that provided, in relevant part, as follows:

On August 9, 2011, Ms. Leslie Lewis was appointed as the principal of Baltimore Community High School, BCHS, with a starting base salary of $106,670. When initially appointed as principal, BCHS was operated by One Bright Ray, Incorporated, a charter school, which was [sic] decided in the spring of 2013 not to seek renewal of its contract. Beginning on July 1, 2013, Baltimore Community began its operations under the Baltimore City Public School system and Lewis remained as Principal during this period. BCHS was located at 6820 Fait Avenue in Baltimore City and was an alternative school for students who were over-age and under-credit.

On Tuesday, November 10, 2015, the Baltimore City School Board voted to permanently close Baltimore Community High School effective June of 2016. According to the Accounting Manual for School Activity Funds, School Activity Funds are generated by non-instructional activities within a school, such as school stores, publications, social and athletic events. The term "school funds" means all monies coming into and leaving the school's possession, excluding general funds, grant funds, and cafeteria funds.

* * *

On October 28, 2013, Lewis, . . . , opened a business checking account at PNC Bank held in the name of Baltimore City Public Schools d/b/a Baltimore Community High School. As principal, Lewis held a fiduciary duty to ensure that the school funds that [sic] were used for their designated purpose. The account remained open through September 1, 2016, when it was closed by PNC Bank due to having a negative balance. During the entire period in which the account was open, Lewis was the sole signer on the account.

* * *

A review of the records for the PNC account held in the name of Baltimore Community High School during the period of October 28, 2013, through September 1, 2016, reflects that the total amount of funds deposited into the account by Lewis was $20,694.66. Included in that total are deposits of checks and money orders in an amount of $10,764.18 and cash

deposits of $9,930.48. Included in the check and money order deposits are eight checks which contain a memo line notation with reference to "uniform." Also included are checks or money orders which contain memo lines [sic] notations to, "dues," "graduation," and "prom tickets."

* * *

Stephen Dixon, a former educational associate at Baltimore Community High School, was present at several certification meetings with students and parents where the graduation requirements were reviewed prior to graduation. During an interview with Office of the State Prosecutor's Investigator's, Mr. Dixon advised that he witnessed Lewis inform parents of the need to pay the dues in order for a student to graduate. Dixon added that Lewis seemed to choose various amounts of monies owed by a student at random, without consulting a list or any records. During these meetings parents would hand cash to Lewis, which Dixon witnessed Lewis place in envelopes on the table.

* * *

A review of the records reflects that Lewis used the ATM/debit card associated with the PNC account to make 49 ATM withdrawals for a total of $9,659.35 and four points of sale purchases for $2,909.80 at Maryland Live! Casino in Hanover, Maryland. Lewis also made three cash withdrawals from the PNC account for a total of $650.00. The total unauthorized withdrawals made by Lewis from the PNC account equals $13,490.28. The Defense contends that the actual theft of cash is closer to $11,000. However, both the State and the Defense agree that the actual theft is over $10,000 and the number will be determined at a restitution hearing at a later date and time.

* * *

Eighteen ATM withdrawals from the PNC account were made by Lewis at an ATM with an address of 7000 Arundel Mills, Hanover, Maryland. It should be noted that the address of the Maryland Live! Casino at Arundel Mills in Hanover, Maryland is 7002 Arundel Mills Circle. It should be further

> noted that three of the ATM withdrawals from the ATM with the address of 7000 Arundel Mills occurred on the same date as three point of sale purchases made by Lewis at Maryland Live! In Hanover[,] Maryland. Fourteen ATM withdrawals from the PNC account were made by Lewis at an ATM with an address of 1525 Russell Street. It should be noted that 1525 Russell Street corresponds with the address of the Horseshoe Casino in Baltimore, Maryland. Additionally, seven of the ATM withdrawals either made at 7000 Arundel Mills or 1525 Russell Street correspond with dates that Lewis also made ATM withdrawals from her personal checking account from either the Horseshoe Casino in Baltimore or Maryland Live! Casino at Arundel Mills.
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> Records obtained from the Maryland Live! Casino reflect that during a period of December 31, 2013, through April 9, 2016, Lewis visited Maryland Live! Casino on at least 83 occasions, playing at least $549,002.86 with a net loss of $62,183.12. Records obtained from the Baltimore Horseshoe Casino reflect that during a period from July 29, 2015, through July 21, 2016, Lewis visited the Horseshoe Casino on at least 63 occasions, playing at least $52,500.00 with a net loss of $10,740.00. The total net loss by Lewis on the one hundred [sic] 146 casino visits equals negative $72,923.12.
>
> The total theft by Leslie Lewis from the PNC account for Baltimore Community High School was $13,490.28. If called to testify, all witnesses would identify Leslie Lewis. And all events occurred in the City of Baltimore, State of Maryland.

With respect to the charge of felony theft scheme in Case Number 1170750031, appellant pleaded guilty on a separate agreed statement of facts that provided, in part, as follows:

> As principal of Baltimore Community High School, Lewis had the power and authority to purchase items for the school through their K12Buy program. She had a fiduciary responsibility to the school in her role as principal to ensure that school funds were spent on school-related expenses. Moreover, Baltimore City Public Schools adopts the concept

of principal autonomy, which loosely translates to their belief that the principal of any given school is in the best position to know the needs of their respective school. Therefore, the principal or person designated by the principal, is responsible for making all purchases for the school through the K12Buy program. K12Buy.com is Baltimore City Schools' e-procurement system and is the sole platform available to users to purchase goods and services for city schools.

* * *

K12Buy is a district-wide purchasing system which is available to staff via the internet 24 hours a day, 7 days a week, 365 days a year. There are approximately 700 active city school users and 10,000 vendors currently available on the system.

* * *

City School users shop for items on the K12Buy platform much like one does on Amazon, selects those items, adds them to their cart, and then checks out, which creates a purchase requisition in the K12Buy system. The user then selects the appropriate account codes and submits the requisition to their supervisor for approval. Once approved, the requisition goes into procurement, where it's converted to a purchase order and then sent electronically to the vendor. The goods and services are then shipped to the school and, upon receipt, the requisitioner will post receipts electronically, which then permits the processing of the invoice when it's presented to accounts payable for payment.

Some products are delivered to Baltimore City Public School headquarters located on North Avenue, while others are delivered directly to the school itself. If a product is delivered to headquarters, the serial number is noted and the product is tagged with a "Property of Baltimore City Schools" tag. If the product is delivered directly to the school, it is incumbent on the principal or individual the principal designates to have the item tagged as Baltimore City school property and a serial number recorded.

As principal, Lewis took the opportunity to order items through the Baltimore Community High School account and use them for non-school designated purpose – purposes. Lewis ordered several items that she gave to individuals for non-school-designated reasons. Over the course of her time as principal, Lewis ordered the following items through K12Buy using Baltimore Community High School funds for non-school designated purposes.

To Mr. Pablo Torres: one Bose Accoustimass 10 Series IV speaker system, approximately $999.88; one Panasonic 50 inch flat-screen television, approximately $779.99; one mini-refrigerator, $185.59; one Epson EX3220 SVGA 3LCD Projector, $449.95; two Apple iPad Minis, $279.00 each or $558.00 in total; one GE 7.0 cubic feet 13-Cycle [electric] dryer, $539.99, which was given as a house-warming present.

* * *

To Ms. Dana Campbell: four Apple iPad Minis, $279.00 each or $1,116.00 total.

To Ms. Lewis' church-based group located in Georgia: one Apple MacBook Pro Laptop with a serial number $1,699, along with an Apple Care Protection Plan of $239.00; one Apple iMac 27-inch desktop with a serial number, $1,699; one Apple MacBook Pro Laptop with a serial number, $1,399; one Apple iPad Pro 32-gigabyte serial – with a serial number – two of those, $779.00 each or a total of $1,558; and one Apple iPad Air 2 16-gigabyte with a serial number, $479.

Those referenced items from Georgia were recovered during the course of the Office of the State Prosecutor's investigation. It's believed that Lewis gifted more items, specifically Apple products, to other family and friends that were never added to the school's inventory after purchase. However, the purchase orders reflect that they were purchased by Lewis using school funds and then in fact delivered to the school.

Those items include: three Apple iMac Desktop Computers, approximately $1,800; four Apple MacBook Pro Laptops, approximately $3,000; three color laser jet printers,

approximately $300 each or a total of $900; three Apple Thunderbolt 27-inch display monitors, $949.00 each or a total of $3,000; two Apple iPad Air 16 GB tablets, $499 each or $998 in total, four Apple iPad Pro 32-gigabyte tablets, $779 each or $3,116.00 in total; Epson projector for $449.95; two Go Pro Hero cameras, $399.95 or $799.90; two Apple iPad Minis, $279 each or $558 in total; and three Microsoft Surface Pro tablets, plus accessories, approximately $5,000 - $5,004.48.

Based on the State's investigation, the State believes the total theft and/or misappropriation by Lewis exceeds $35,000. The Defense, however, contends that this number is closer to $10,290. However, both parties, the State and Defense, agree that the total theft misappropriation is over $10,000 and the actual number will be determined at a later restitution hearing at a later date and time.

It should be noted that on the majority of the above-referenced items' respective purchase orders, Lewis supplied false information and/or justification for the purchases. For example, Lewis wrote in the K12Buy program justification section that these products were going to be used for the, "Technology for Special Education Research Room," or the, "Special Education Intervention Program," or the, "English Lab Mobile Computer Lab," or for, "Teacher Professional Development."

If called to testify, witnesses who were employed at Baltimore County [sic] High School would testify that the school did not have an English mobile computer lab, and further that none of the above-referenced items were used within the English Department. Moreover, witnesses employed in the Special Education Department, including the Special Education Coordinator, would testify that while a Special Education Resource Room existed at Baltimore Community High School, it was outdated and none of the above-referenced items were ever used for special education resources or invention – intervention programs. Further, witnesses would testify that they were not aware of any of the above-noted Apple or Microsoft products being used at Baltimore Community High School.

> The Defense disputes the State's theory on how the items were received by the individuals employed at Baltimore Community High School, specifically Torres, Rabara, Stokes, and Campbell. However, the Defense does agree that all of the property recovered from Georgia – Ms. Lewis' faith-based group based in Georgia – they do agree to that and that that theft/misappropriation is in excess of $10,000. Again, the actual amount to be determined at a later restitution hearing.
>
> If called to testify, all witnesses would identify Leslie Lewis. And all events occurred in the City of Baltimore, State of Maryland.

The court found that there was a factual basis for appellant's plea, and entered a guilty verdict with respect to both counts of felony theft scheme.

B. Restitution Hearing

A restitution hearing was held over the course of two days. Jeffrey Parker, the Director of Materials Management, who was responsible for all procurement in the Baltimore City school district, testified that the school district used a procurement system known as K12Buy. Each school was supposed to have a requisitioner and an approver for purchases for control purposes, and the requisitioner would sign to indicate that they received the product ordered. According to Mr. Parker, the requisitioner was required to post their receipts and that person was not permitted to delegate that responsibility to another person. According to Mr. Parker, appellant was both a requisitioner and approver and her login and account number were used for the purchase orders that are the subject of this case.

Michael Radding, the Director of Technical Support Services for Baltimore City Public Schools, oversaw technical support for all end-user devices in the school district

including laptops, desktop computers, audio-visual equipment, inventory, and help desk services. His department was responsible for ensuring that all assets were inventoried. He explained that principals had been requested to notify his department whenever a computer technology-related procurement came into their school.

The process of inventorying assets differed depending on the vendor. For example, Lenovo devices were sent to the location where they were needed and a contractor applied an asset tag to each device. Information from the asset tag would be loaded into a computer inventory system that contained information such as the type of device, the date it was purchased, the serial number, and warranty information. Apple devices were handled differently. When a principal or district office leader ordered a device from Apple, they were supposed to contact the technology department to insure the item was tagged and inventoried. The technology department would send a team to the school to tag and inventory the device and set it up to be used in the school environment.

Vendors also provided Mr. Radding's department information regarding technology purchases. From information received from Apple in 2016, it was discovered that the required procedures were not followed at Baltimore Community High School ("BCHS") for any Apple product at the school.

Once it was determined that there was a possible theft at BCHS, the Baltimore City school system coordinated with the Baltimore City School Police and conducted an administrative investigation. Subsequently, the case was submitted to the Office of the State Prosecutor which began its own independent investigation.

Daniel Bralove, an investigator with the Office of the State Prosecutor, was assigned to investigate the report of theft at BCHS. In the Fall of 2016, he reviewed procurement documents from the Baltimore City school system and subpoenaed records from BCHS's account at PNC Bank for transactions from October 2013, when the account was opened, through the summer of 2016. With regard to the PNC Bank account, Mr. Bralove discovered that appellant was the only person listed on the signature card. The account was intended for student activity funds brought into the school from events such as fundraisers, bake sales, school uniform sales, class dues, and prom. During the two-and-a-half-year period that the account was opened, there were deposits of $9,000 in cash and $12,000 in checks and money orders. During that same period, there were 40 withdrawals through automatic teller machines ("ATMs") totalling $9,774.85. The ATM card was never reported lost or stolen. According to Mr. Bralove, Baltimore City schools are prohibited from having an ATM or debit card.

The majority of the withdrawals made from the PNC Bank account occurred at ATMs located at the Maryland Live Casino in Hanover, Maryland, and the Horseshoe Casino in Baltimore City. In addition to the ATM withdrawals, 4 point-of-sale transactions, in the total amount of $2,909.80, were made at the Maryland Live Casino and 3 cash withdrawals were made in the total amount of $650. Mr. Bralove subpoenaed records from both casinos and matched the records for appellant's personal casino accounts to the dates and times of the ATM withdrawals.

BCHS closed on June 30, 2016. According to Mr. Bralove, appellant sent an email in November 2015 that indicated she was aware that the school was to be closed. A team

of Baltimore City school employees prepared for the school closing by checking inventory lists. They found that there were a significant number of items, particularly technology items, that had been purchased, but were not at the school. Mr. Bralove subpoenaed procurement records and purchase orders for the school. He also subpoenaed records from the technology company Apple for records regarding purchases made for the school. Mr. Bralove discovered that items had been purchased from Apple but had not been added to the school's inventory list. None of the items he learned about from Apple's records had been reported lost or stolen by the school.

Mr. Bralove contacted Apple and requested registration information for all products purchased by the school. Apple provided registration information for most, but not all, of the products. Quite a few of the items ordered and paid for with school system money were registered to Annie Miller, who lived outside Atlanta, Georgia. Six items were recovered by an agent of the Georgia Bureau of Investigation. The name Antonio Hurt was also included on the list of individual registrations Mr. Bralove reviewed. Mr. Hurt previously had been employed by the Baltimore City school system. He was in charge of a religious group called "Covenant Keepers." Appellant was a member of the Covenant Keepers group, paid monthly dues to the group, and received regular communications from Mr. Hurt and the group concerning spiritual matters.

Mr. Bralove gave specific testimony about numerous technology items that were purchased but not located at the school, including items that were recovered from or linked to individuals in Georgia, former employees of BCHS, and relatives of those employees. He also testified about a GE brand clothes dryer, purchased for $539.99, that was found in

the home of Pablo Torres, an employee at BCHS. We shall include more specific information about those items as necessary in our discussion of the questions presented. Mr. Bralove also gave extensive testimony about false statements contained in the requisition description portion of the purchase orders regarding the purpose for each item purchased. Mr. Bralove testified that, based on his investigation, including his review of purchase orders and witness statements, the total amount of appellant's theft by fraudulent requisition descriptions on purchase orders was $45,199.06.

DISCUSSION

I.

Appellant contends that the sentencing court improperly ordered restitution for crimes to which she did not plead guilty. She maintains that at the plea hearing, she admitted guilt only to the theft of $11,000 in cash and the theft of items sent to her faith-based group in Georgia. According to appellant, because she did not admit guilt to the theft of any other items, the sentencing court was without authority to order her to pay restitution in excess of $11,000 for the cash and for items other than those that were sent to Georgia. We disagree and explain.

Restitution is a criminal sanction, not a civil remedy, *State v. Stachowski*, 440 Md. 504, 512 (2014). It serves to compensate the victim and punish and rehabilitate the criminal. *Pete v. State*, 384 Md. 47, 55 (2004). It may be ordered as part of a sentence pursuant to § 11-603 of the Criminal Procedure Article, which provides, in relevant part:

> (a) 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:
>
> > (1) 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;
> >
> > * * *
> >
> > (b) A victim is presumed to have a right to restitution under subsection (a) of this section if:
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> > (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.

We review a trial court's restitution order for abuse of discretion. *In re: G.R.*, 463 Md. 207, 213 (2019); *Ingram v. State*, 461 Md. 650, 659 (2018); *Silver v. State*, 420 Md. 415, 427 (2011). When a trial court's restitution order involves an interpretation and application of Maryland statutes and case law, we must determine whether the court's conclusions are legally correct under a *de novo* standard of review. *Griffin v. Lindsey*, 444 Md. 278, 285 (2015)(citing *Walter v. Gunter*, 367 Md. 386, 392 (2002)). "We will not disturb the judgment on the facts, however, unless the trial court's findings are clearly erroneous." *Goff v. State*, 387 Md. 327, 338 (2005).

In the instant case, appellant pleaded guilty to two counts of felony theft scheme in excess of $10,000 in violation of § 7-104 of the Criminal Law Article. The statement of facts offered in support of appellant's guilty plea detailed the two theft schemes, one involving theft from BCHS's bank account and the other involving the theft of various goods through the use of deceptive purchase orders. At the plea hearing, the prosecutor

advised the sentencing court that, with regard to the theft scheme involving the school's bank account, appellant contended "that the actual theft of cash is closer to $11,000. However, both the State and the Defense agree that the actual theft is over $10,000 and the number will be determined at a restitution hearing[.]" With regard to the theft of property, the prosecutor advised the sentencing court that appellant disputed "the State's theory on how the items were received by the individuals employed at" BCHS, but agreed that all of the property recovered from Georgia was in excess of $10,000 and that the actual amount of restitution would be determined at a later hearing. At the conclusion of the State's statement of facts, defense counsel advised the court that "the only addition is that Ms. Lewis does reject that she gave additional items to other family and friends that lead to the total of $35,000." Nevertheless, appellant pleaded guilty to both counts. The sentencing court found that there was a factual basis for the plea and found appellant guilty of both charges.

Appellant argues that because she disputed some of the individual allegations of theft, the sentencing court was without authority to award restitution. We are not persuaded. Maryland law is clear that a theft scheme, which requires a continuous course of action, is one offense that results in one conviction. Section 7-103(f) of the Criminal Law Article provides:

> (f) When theft is committed in violation of this part under one scheme or continuing course of conduct, whether from the same or several sources:
>
> (1) the conduct may be considered as one crime; and

> (2) the value of the property or services may be aggregated in determining whether the theft is a felony or a misdemeanor.

Moreover, Maryland has long recognized the single larceny doctrine, pursuant to which a person who steals multiple items from one or more persons at a time, or at different times as part of a continuing course of conduct, ordinarily may be charged with only one crime. *State v. White*, 348 Md. 179, 195-96 (1997). Appellant directs us to a number of cases that stand for the proposition that unless a defendant agrees otherwise, restitution may be ordered only for crimes for which a defendant was convicted. Notably, appellant pled guilty and was convicted of two counts of felony theft scheme and the restitution ordered was a direct result of each of those schemes. *See In re Earl F.*, 208 Md. App. 269 (2012) (upholding restitution of $600 in case where juvenile was adjudicated delinquent for theft of property with a value under $100).

Appellant argues that the "sentencing court only made a finding that there was sufficient evidence in support of the guilty plea, and did not make a finding as to [her] responsibility for the individual thefts in question." As a result, the court was authorized to order her to pay restitution only for the loss that was a direct result of her theft of school property that was given to her faith group in Georgia and the cash she admitted stealing. When the amount of restitution is in dispute, the court must determine, by a preponderance of the evidence, the losses that are a direct result of the crimes for which the defendant was convicted. Here, the court found, by a preponderance of the evidence, that a loss of $58,689.34 was directly related to the two theft schemes for which appellant was convicted. The record shows that there was sufficient evidence from which the court could reasonably

find, by a preponderance of the evidence, that the restitution awarded was directly related to the felony theft schemes.

With regard to the theft scheme involving the BCHS checking account at PNC Bank, the evidence established that the account was opened for the purpose of establishing a "student activity fund;" that various money collected from students was deposited in the account; that appellant denied the existence of the account to school officials; that she was the sole signature on the account; that she obtained an ATM card for the account in violation of school policy; that the ATM card had never been reported lost or stolen; that no account activity had been disputed; that the ATM card was used to make 49 withdrawals at ATMs in or near two casinos; that three counter withdrawals and four point-of-sale purchases were made at Maryland Live Casino; that a total of $13,490.28 was withdrawn or spent at the casino; and, that casino records showed that appellant signed into her player account on the same dates that a majority of the withdrawals were made. From this evidence, the court could reasonably find, by a preponderance of the evidence, that the $13,490.28 loss was directly related to the felony theft scheme.

The same is true with respect to the felony theft scheme arising out of appellant's acts of purchasing items using false requisition descriptions and then giving those items to various individuals. Appellant pleaded guilty to that theft scheme. The purpose of the restitution hearing was to determine the amount of restitution for that crime. In determining the amount of restitution, § 11-603 of the Criminal Procedure Article required the sentencing court to find, by a preponderance of the evidence, that the loss was a direct result of the crime for which appellant was convicted, in this case the theft scheme

pertaining to the items purchased. Appellant admitted to stealing and sending to Georgia certain items. As for the other disputed items, evidence was presented at the restitution hearing to show that appellant was the person who ordered and received those items. Evidence was also presented that appellant used purchase orders with deceptive requisition descriptions; that some items were ordered after appellant became aware that BCHS would be closing permanently; that the items were never added to the school's inventory and were not given asset tags as required by the school system; that employees at BCHS did not recall seeing the items at the school and were not familiar with them; that none of the items in question were ever reported lost or stolen; that some of the items were registered to people associated with appellant but not employed at BCHS, such as the person listed as appellant's emergency contact and appellant's mother; that one item was registered to appellant; and, that some individuals who received items told investigators that the items were given to them by appellant as gifts. In addition to that evidence, purchase orders, requisition statements, and an extensive summary of each disputed item were admitted in evidence and showed that the total value of property stolen in this theft scheme was $45,199.06. From this evidence, the sentencing court could reasonably determine, by a preponderance of the evidence, that the restitution awarded was directly related to the felony theft scheme.

II.

Appellant next argues that the trial court abused its discretion in ordering her to pay for recovered and recoverable property and in utilizing the purchase price of the goods in calculating restitution. She also argues that the State failed to present evidence of

depreciation. According to appellant, these errors "gave the State a 'windfall' and allowed the State to recover twice for one harm." We are not persuaded.

Appellant's argument centers on certain items that were recovered, or were recoverable by the State, but were included in the total amount of restitution the court ordered. According to appellant, those items included:

1. one 15-inch MacBook Pro, purchased for $1,699
2. one 13-inch MacBook Pro, purchased for $1,399
3. one iPad Air, purchased for $479
4. one iPad Air, purchased for $499
5. two iPad Pro, purchased for a total of $1,558
6. one iMac 27-inch desktop computer, purchased for $1,699
7. two 15-inch MacBook Pro, purchased for $1,899
8. four iPad minis, purchased for a total of $1,116
9. one Bose Acoustimass Speaker System, purchased for $999.99
10. one iPad mini purchased for $279
11. one GE electric clothes dryer, purchased for $539.99[1]

Section 11-603(a)(1) of the Criminal Procedure Article permits a court to enter a judgment of restitution 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." In the instant case, the items at issue had been used, some for years, before they were found by investigators. At the restitution hearing, the prosecutor acknowledged that the recovered property had some value, but for several reasons, that value was difficult to ascertain. The prosecutor proposed that the property be returned to

[1] The clothes dryer was found in the possession of Pablo Torres. As there was no place to store the dryer, the Office of the State Prosecutor asked Mr. Torres to maintain possession of it until the disposition of appellant's case.

appellant for her to sell and then apply the proceeds toward the restitution. The prosecutor argued:

> It's also the State's position that the recovered property, and I struggled with this, to be honest, that recovered property has value. It does have value. But the State's position is that's not something for Baltimore City Public Schools to determine. It's the State's position that the items recovered be given back to Ms. Lewis for her to sell to get whatever value she can for them to be paid toward that restitution amount.
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> * * *
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> The other point for that, Your Honor, is that most of these items don't have charging devices or cable cords. And when I spoke with Mr. Ratting initially he said it – it's really hard to figure out a value for that if it doesn't have the proper things to make it go. You know, the cell phone and iPad, it's older technology than it is today. What's the operating system? Does it have to be uploaded? That's why, based on the evidence, the summary charts presented by the State, we are asking for that dollar amount.

The sentencing court recognized, as a matter of "common sense" that the type of technology at issue lost a significant amount of value, if not all value, stating:

> The question as to the amount, I mean, what's been presented to me was the figure that was paid at the time by the school system for these items, some of which have been recovered some significant period after they were purchased. And I would find, just common sense, that these items lose significant value or almost all value, any sort of technology of this type, if it is one, sold, and then utilized. Not just for the fact it's utilized, just by the age of the products and when, in fact, in a sense other technology supercedes that technology. So – and I may have misspoke, I'm not quite sure where the Court of Appeals or Court of Special Appeals would look at it. It seems to me under 615 – 11-615 that the, you know, when the Court is presented with statements regarding lost wages or lost medical – losses due to medical charges, counseling, funeral, burial expenses, et cetera, the person who's

> challenging in this case would be Ms. Lewis, has the burden to show fairness and reasonableness but I'm not going to necessarily say that it was her burden in this particular case to show the value of the property but it seems to me that the State has presented and shown me a value and I think it's an appropriate value regardless of whether these used technology was [sic] recovered or not. And so therefore I will order restitution in the amount of $45,199.06 for that lost property for a total, and I will enter a judgment of restitution in the amount of $58,689.34.

Clearly the sentencing court recognized the difficulty in valuing the stolen property that had been used. Some items were older and some were missing important components such as charging devices and cords. In light of all these considerations, the court concluded that the purchase price was an appropriate value to use for purposes of restitution. In Maryland, a court's restitution order must be "fair and reasonable[.]" *Goff*, 387 Md. at 350. The amount of restitution "is not one of absolute certainty or precision. Rather, there must be competent evidence showing entitlement to and the amount of [ ] expenses to be incurred by the victim as a direct result of the crime[.]" *In re: Cody H.*, 452 Md. 169, 192 (2017) (citation and footnote omitted). Competent evidence "'need only be reliable, admissible, and established by a preponderance of the evidence.'" *Id.* (quoting *McDaniel v. State*, 205 Md. App. 551, 559 (2012)).

On the record before us, we find no abuse of discretion in the court's decision to order restitution in the full amount of the money used by appellant to purchase the recovered and recoverable items. The State recommended that appellant receive the recovered and recoverable items so that they can be sold and the proceeds applied toward the restitution ordered. In using the original purchase price to calculate the amount of

restitution, the court clearly adopted the State's recommendation. Because the recovered and recoverable items are required to be turned over to appellant to be sold and the proceeds applied to the restitution ordered, the State did not receive any "windfall."

III.

Appellant contends that the sentencing court abused its discretion in denying her request to consider an insurance policy when determining the amount of restitution. This contention is without merit.

At the restitution hearing, after the court announced its findings of fact with regard to restitution, appellant asked the court to consider a 2016 insurance policy. The policy was marked as Defendant's Exhibit 13, but was not admitted in evidence. The defense asserted that the insurance policy provided coverage for the Baltimore City school system "up to a million dollars as it relates to any theft that occurred . . . by employees," and that appellant should be responsible for paying only the amount of the deductible under the policy, which was $10,000. According to the defense, because there was insurance coverage in place, the victim "has not had a loss which there is to pay restitution to [sic]." The court rejected appellant's argument.

On appeal, appellant relies on the doctrine of subrogation and argues that it is not fair and reasonable for the Board of Education to collect twice for one harm by receiving restitution from her and reimbursement under the insurance policy. The issue raised below by appellant was slightly different, *i.e.*, that she should be responsible for paying only the deductible of $10,000. But even if it could be said that the issue presented here was raised in and decided by the court below, the record makes clear that there was absolutely no

evidence presented to show that the school system recovered under a policy of insurance for the losses sustained by appellant's theft schemes. Nor was there any evidence to establish that the 2016 policy covered the theft schemes, which were committed from 2013 through 2016. Further, the doctrine of subrogation has no application in the instant case. As we have explained:

> Subrogation simply means substitution of one person for another; that is, one person is allowed to stand in the shoes of another and assert that person's rights against the defendant. Factually, the case arises because, for some justifiable reason, the subrogation plaintiff has paid a debt owed by the defendant. Having paid the defendant's creditor, the plaintiff stands in the creditor's shoes . . . and is entitled to exercise all the remedies which the creditor possessed against the defendant.

Nutter v. Black, 225 Md. App. 1, 27 (2015) (quoting 1 Dan B. Dobbs, LAW OF REMEDIES § 4.3(4) (2d ed. 1993) (footnotes and quotation marks omitted)). As appellant failed to present any evidence below to show that the school system recovered under a policy of insurance for losses sustained as a result of her theft schemes, the court properly refused to consider the 2016 insurance policy.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.