

Circuit Court for Montgomery County  
Case No. JA-19-390

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2398

September Term, 2019

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IN RE: C.M.

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Nazarian,  
Shaw Geter,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 13, 2020

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Circuit Court for Montgomery County, sitting as a juvenile court, ordered C.M., appellant, to make restitution after he admitted his involvement in the offense of conspiracy to commit unauthorized use of a motor vehicle. Following a disposition hearing, C.M. was ordered to pay \$1,015 in restitution. On appeal, he challenges the restitution award, claiming that it should be vacated because his delinquent acts did not directly cause the victim's loss. The State agrees that the court erred in ordering C.M. to pay restitution. For the reasons that follow, we shall vacate the restitution order.

At the plea hearing, the State proffered that the victim's vehicle had been stolen from his driveway. The following day police observed the vehicle and conducted a traffic stop. C.M., who was seated "on the rear driver's side," was one of four juveniles in the vehicle. The police interviewed all four occupants. R.R., the driver of the vehicle admitted stealing the vehicle and driving it to Gaithersburg to pick up C.M. R.R. stated that he had told C.M. that the vehicle was stolen. When the police spoke with C.M., he did not deny knowing the vehicle was stolen. The victim responded to the scene of the stop and identified the vehicle. He also indicated that a prescription bottle containing 10 Adderall pills and a pair of sunglasses valued at \$180 were missing from the passenger door pocket. Based on this proffer, the court found C.M. involved in the offense of conspiracy to commit unauthorized use of a motor vehicle.

At the disposition hearing, the court ordered C.M. to pay "restitution in the amount of \$1,015" to be paid jointly and severally with the other co-defendants. That restitution amount appears to be based on a "Petition and Affidavit in Support of Restitution" filed by the victim in R.R.'s juvenile case. That petition sought restitution as follows: (1) \$203 for

polarized Ray-Ban aviator sunglasses; (2) \$49 for “Google Home Mini; (3) \$113 for “2x Adidas hats + Armani Exchange Sweater; (4) \$150 for “detailing service to remove smell; and (5) \$500 for deductible. It is not clear from the record what “smell” needed to be removed or what caused the smell. It is similarly unclear why the victim had to pay a \$500 deductible, as there is no indication that the car was damaged as a result of the theft. After the court ordered restitution, defense counsel indicated that there had been “no agreement with regard to restitution” and requested the court to push the restitution issue out until all the cases were resolved to determine “the value of the items and whether or not [C.M.] is responsible as a result of his activity.” When the court declined to reconsider the restitution order, defense counsel noted his objection.

Section 11-603(a) of the Criminal Procedure Article provides that a court may enter a judgment of restitution ordering a child respondent to make 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[.]” “[O]nly property damaged or destroyed during the commission of the delinquent act c[an] be considered[.]” *In re Jason W*, 94 Md. App. 731, 736 (1993). Moreover, the “statute does not allow restitution simply because property damage results from a delinquent act. It requires that the child have caused that damage.” *Id.* at 737.

C.M. contends that the court erred in ordering restitution because there was no evidence that any damages suffered by the victim were directly caused by his delinquent act. We agree. In *In re Levon A.*, 361 Md. 626 (2001), the juvenile petitioner was found involved in unauthorized use of a motor vehicle based on his having been a passenger in a

car that he did not steal, but that he knew was stolen. After finding him delinquent, the juvenile court ordered him to pay restitution for damage done to the car and for the value of certain items taken from the car. *Id.* at 629-31. The Court of Appeals reversed the restitution order, holding that the petitioner was a “passive passenger,” and that there was no evidence that he had been directly responsible for the damage. *Id.* at 640-41.

Here, the court did not find C.M. to have been involved in the theft of the vehicle or in the theft of any of the victim’s personal property. Rather, the court found C.M. involved in the delinquent act of conspiracy to commit unauthorized use of a motor vehicle based on his having been a passenger in the vehicle while knowing it was stolen. There was no evidence in the State’s proffer indicating that C.M.’s presence as a passenger in the vehicle was the direct cause of the “smell” in the vehicle or of any other damage that would have required the victim to pay a deductible. Because C.M. did not otherwise agree to pay restitution as part of the plea agreement, the restitution order must be vacated. *See Silver v. State*, 420 Md. 415, 436-37 (2011) (holding that a “court may not order restitution for crimes of which the defendant has not been convicted unless the defendant has expressly agreed to pay such restitution as part of a valid plea agreement”).

**RESTITUTION ORDER VACATED.  
COSTS TO BE PAID BY  
MONTGOMERY COUNTY.**