

Circuit Court for Charles County
Case No. CC # 08-K-15-000767

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2399

September Term, 2016

PAMELA EVETTE CALDWELL

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Nazarian, J.

Filed: July 17, 2018

* 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.

On October 14, 2016, Pamela Caldwell pled guilty in the Circuit Court for Charles County to conspiracy to commit first-degree assault against Jourdan Lucas, who died from injuries he received at the hands of Ms. Caldwell's conspirator. As part of her sentence, she was ordered to pay \$6,138.70 in restitution to Mr. Lucas's family for his funeral expenses. Ms. Caldwell asks us on appeal to vacate the restitution order as an illegal sentence, arguing that she did not plead guilty to a crime that resulted directly in Mr. Lucas's death. We hold that Mr. Lucas's death was the direct result of the conspiracy to assault him and we affirm the sentence.

I. BACKGROUND

On May 4, 2015, Shondell Middleton and Kevin Caldwell,¹ Ms. Caldwell's son, drove Ms. Caldwell's car from her home in the Adams Crossing Apartment Complex to Waldorf to buy marijuana from Mr. Lucas. The two men picked up Mr. Lucas and drove to Tobacco King to buy a scale to weigh out a portion of Mr. Lucas's marijuana, which he brought along in a jar. Mr. Lucas left the jar and his cell phone in the car, then entered Tobacco King alone to buy the scale. But while he was inside, Kevin and Mr. Middleton left his phone on the curb and drove away, keeping the marijuana and stranding Mr. Lucas at Tobacco King.

Mr. Lucas, upset about the theft of his marijuana, arrived at Adams Crossing later that day with two friends, one of whom was Christopher Troese, and spotted Mr. Middleton

¹ For the sake of clarity, and meaning no disrespect, we will refer to Kevin Caldwell by his first name.

and Kevin still sitting in Ms. Caldwell's car and allegedly taunting him. Mr. Lucas charged at them, but they drove away. So Mr. Lucas returned to Adams Crossing later that night with approximately nine others to confront Mr. Middleton and Kevin. Mr. Lucas attempted, unsuccessfully, to coax Mr. Middleton and Kevin out of Ms. Caldwell's apartment. When they would not come out, Mr. Lucas and some of his other friends vandalized Ms. Caldwell's apartment door and car.

Two days later, Ms. Caldwell, Kevin, and Mr. Middleton went out together and purchased a BB gun. The next morning, May 7, Mr. Middleton (still in Ms. Caldwell's apartment) used Kevin's phone to call Mr. Lucas, and said, "I'm ready to fight, let's fight." Mr. Lucas arrived with two friends, again including Mr. Troese, and called Mr. Middleton, who was on the balcony, to come down and fight. Mr. Middleton replied "I'll be right down there," and immediately called Ms. Caldwell. Ms. Caldwell was at work but she drove home, "screeching" into the parking lot and exiting the car with the BB gun pointed at Mr. Lucas and his two friends. At some point she called to Mr. Middleton, who emerged from the apartment with a knife and ran down the stairs after Mr. Lucas, who fled. After about fifty yards, Mr. Middleton caught up to Mr. Lucas and stabbed him once, but Mr. Lucas was able to gather himself and continue to flee. Mr. Middleton audibly announced to Mr. Lucas "I'm going to kill you Mother Fucker" and resumed the chase. Ms. Caldwell and Mr. Troese followed behind.

Mr. Middleton eventually caught Mr. Lucas again and stabbed him repeatedly. While Mr. Middleton was on top of Mr. Lucas and actively stabbing him, Ms. Caldwell

and Mr. Troese caught up to them. Mr. Troese tried to get Mr. Middleton off of Mr. Lucas, who was no longer fighting back. But Ms. Caldwell brandished the BB gun at Mr. Troese and told him to “get back.” Mr. Troese believed it was a real gun, backed off, and retreated to his car. When he returned to the scene minutes later in his car, Mr. Middleton and Ms. Caldwell had already returned to Ms. Caldwell’s apartment.

Ms. Caldwell was indicted on two counts of murder, first-degree assault and weapons charges, and later agreed to plead guilty to a single charge of conspiracy to commit first-degree assault. In return, the State agreed to dismiss the remaining charges and to “remain silent as to the Defendant’s request for Work Release.” The agreement also noted that “[t]he parties are otherwise free to allocute at sentencing,” but was silent as to restitution. After hearing the State’s evidence at the plea hearing, the court accepted Ms. Caldwell’s plea and deferred sentencing.

At sentencing, the State asked the court for the first time to order Ms. Caldwell to pay restitution for Mr. Lucas’s funeral expenses. Ms. Caldwell objected, and argued that restitution was not included in the plea agreement. The Court imposed a sentence of sixteen years and six months, with all but eighteen months suspended. The Court authorized Ms. Caldwell to serve her time on work release contingent on paying restitution, and set a separate hearing on that issue. At the restitution hearing, Ms. Caldwell objected again, arguing that Mr. Lucas’s death was not the direct result of her criminal conspiracy with Mr. Middleton because she neither murdered Mr. Lucas nor pled guilty to a “crime that involved a death.” The Court noted her objection but rejected her contentions:

No, no. It's just that the Court does have the authority to order it. It was [the] direct result of this crime. I do think it's appropriate to do so. As noted, the co-defendant, I mean, I mean, the victims need to be made whole. A co-defendant, I'm not sure how many years he received, but it's unlikely that he's gonna be in a position to pay in a reasonable amount of time. She will be. She got the benefit of work release.

Ms. Caldwell filed a notice of appeal followed by an application for leave to appeal, then a motion to treat the notice of appeal as an application for leave to appeal. We directed the State to respond to Ms. Caldwell's application for leave to appeal and to "address (1) [Ms. Caldwell]'s assertion that the circuit court erred in ordering her to pay restitution" and (2) "[a]ssuming that [she] did not agree to pay the restitution at issue as part of the plea agreement, [to] address whether the victim's funeral expenses can be deemed 'a direct result' of a conspiracy to commit first-degree assault." After the State responded, we granted Ms. Caldwell's motion to treat her notice of appeal as an application for leave to appeal, granted that application, and transferred the case to the regular appeal docket.

II. DISCUSSION

Ms. Caldwell's sole contention on appeal is that the sentencing court's restitution order was illegal because the victim's death, and thus his funeral expenses, were not a direct result of the crime to which she pled guilty—conspiracy to commit assault.² On the facts of this case, we disagree.

Section 11-603 of the Criminal Procedure Article ("CP") governs a court's authority to order restitution as part of a criminal sentence, as opposed to a condition of probation.

² In her brief, she phrased the Question Presented as: "Did the sentencing court impose an illegal sentence by ordering Appellant to pay restitution for the victim's funeral expenses?"

Md. Code (2001, 2008 Repl. Vol.). Funeral expenses can be among the expenses covered by a restitution order, but only if they're incurred as a direct result of the crime:

(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:

* * *

(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*

CP § 11-603(a)(2) (emphasis added); *see also Pete v. State*, 384 Md. 47, 65 (2004) (“[a] probation order for a criminal conviction conditioned on restitution must meet the minimum requirements of: (1) a victim with property damage of the type enumerated in § 11-603, and (2) the damage to the *victim* be the direct result of the crime for which the defendant was convicted and for which it was *directed*”) (emphasis added); *Wiredu v. State*, 222 Md. App. 212, 227 (2015) (explaining that in criminal cases, CP § 11-603 “ties restitution to the *victim*’s injuries and losses.”) (emphasis in original).

The decision to order restitution pursuant to CP § 11-603 and the amount lie within the trial court’s discretion. *See Silver v. State*, 420 Md. 415, 427 (2011). And “we will not disturb the judgment on the facts . . . unless the trial court’s findings are clearly erroneous.” *Goff v. State*, 387 Md. 327, 338 (2005). But in cases where a trial court’s restitution order involves the interpretation and application of Maryland statutes and case law, we determine *de novo* whether the court’s conclusions are legally correct. *Griffin v. Lindsey*, 444 Md. 278, 285 (2015). And “when a sentencing court exceeds the limits of its statutory authority

in ordering restitution[,] . . . we will vacate the order as an illegal sentence.” *Stachowski v. State*, 213 Md. App. 1, 14 (2013), *rev’d on other grounds*, 440 Md. 504 (2014).

Funeral expenses are listed in the statute, so there’s no issue there, nor is there any dispute that the crime matches the victim, since Mr. Lucas was the only potential object of the conspiracy. Ms. Caldwell disputes, however, the connection between her crime—conspiracy to commit first-degree assault—and Mr. Lucas’s funeral expenses. She relies *first* on *Walczak v. State*, 302 Md. 422, 427 (1985), which interpreted a now-superseded version of the restitution statute that limited restitution to convictions for specific crimes.³ The defendant in that case had robbed two victims, but was found guilty (on an agreed statement of facts) of one count as to only one, and the State *nol prossed* the remaining charges. The Court of Appeals reversed the restitution order as to the second victim because, as a result of the *nol pross*, there was no corresponding conviction. *Id.* at 433. Ms. Caldwell contends here that because she was not convicted of murdering Mr. Lucas, “[she] could be ordered to pay restitution only for damages that *directly resulted* from the crime of conspiracy to commit first degree assault – not the damages that resulted from the actions of her alleged co-conspirator.” But this case presents no such disconnect: Mr. Lucas was the victim of the conspiracy to which Ms. Caldwell pled guilty, and the fact that her conspirator was the one who caused the death doesn’t sever the connection at that level.

³ Maryland Code Art. 27, § 640(b) stated: “Restitution may be ordered upon conviction of certain crimes.” *Walczak*, 302 Md. at 427. For robbery, the crime at issue in *Walczak*, the statute provided that “[e]very person convicted of the crime of robbery, or as accessory thereto before the fact, shall restore the thing robbed or taken to the owner, or shall pay to him the full value thereof” *Id.* at 428 (citing Md. Code, Art. 27, § 486).

Second, she argues that because the crime of conspiracy is completed once the conspirators reach an agreement, Mr. Lucas’s death cannot be the “direct result” of the crime she committed. But she relies largely on cases that required the defendant to pay restitution for damages not connected at all to the crimes of conviction, *see Silver*, 420 Md. at 432 (restitution order illegal where defendants ordered to pay restitution for care of two horses regarding whom animal cruelty charges were dropped); *Pete*, 384 Md. at 67 (restitution order illegal where court required restitution for damage to police cruiser arising from non-jailable reckless driving offense), or to individuals who were not the victims; *Wiredu*, 222 Md. App. at 227–28 (restitution order illegal where court ordered restitution for lost wages of the wife of drunk driving victim). And again, we have a clean connection between the crime and the victim here.

The real question is whether Mr. Lucas’s death was a “direct result” of the conspiracy to assault him. *Goff v. State*, a case Ms. Caldwell attempts to distinguish, is instructive. 387 Md. 327 (2005). In that case, the defendant pinned the victim in a shower and repeatedly assaulted him, which damaged the shower insert in addition to causing the victim’s physical injuries. *Id.* at 332. The Court of Appeals affirmed the restitution order that included the cost of repairing the shower insert, and distinguished *Walczak* on the ground that “[i]n the present case, the court ordered Mr. Goff to pay restitution as punishment for the crime of which he was convicted—assault [of the victim], which resulted in damage to [the victim]’s person and property.” *Id.* at 348. Although the defendant wasn’t convicted of a property crime, the assault resulted directly in damage to

property as well as the person, and both forms of damage could properly be included in the restitution order.

So too here. Ms. Caldwell pled guilty to conspiracy to commit first-degree assault of Mr. Lucas. Even if she didn't intend for him to die, he did. Were it not for her role in the melee—as detailed in her plea allocution, she escalated the encounter and used a BB gun to prevent Mr. Troese from coming to his aid—Mr. Lucas might not have been killed and funeral expenses might not have been incurred. And there was no temporal gap between the agreement and Mr. Lucas's death or any intervening event or person, since her conspirator, Mr. Middleton, carried out the fatal assault as she kept Mr. Troese at bay.

Third, Ms. Caldwell argues she “was convicted of conspiracy to commit assault—an inchoate offense—whereas Mr. Middleton was convicted of murder.” As such, she contends that “Mr. Lucas's funeral expenses were incurred by his family as a direct result of the murder, a crime for which Mr. Middleton, not Ms. Caldwell, bore legal responsibility.”

To be sure, Mr. Middleton could have been ordered to pay the funeral expenses as well. But that doesn't absolve Ms. Caldwell. She pled guilty to conspiracy, “an agreement to accomplish an act ‘in futuro; the purpose of conspiracy is to do something.’” *Manuel v. State*, 85 Md. App. 1, 14 (1990) (quoting *Jones v. State*, 8 Md. App. 370, 379 (1969)). Moreover, “a conspirator can be liable for the conduct of a co-conspirator.” *Mackey v. Compass Mktg. Inc.*, 391 Md. 117, 128 (2006). Her potential liability for conspiracy is the same as if she had carried out the assault herself. *See* Md. Code (2002, 2012 Repl. Vol.),

Criminal Law Article, § 1-202 (“[t]he punishment of a person who is convicted of conspiracy may not exceed the maximum punishment for the crime that the person conspired to commit.”).

When sentencing, the trial court considered the full array of circumstances in determining what sentence to impose. The court indisputably was authorized by statute to impose restitution for this crime, though Ms. Caldwell’s plea agreement was silent on the issue. The court could have sentenced her to a much longer period of incarceration—again, the plea agreement didn’t limit the court in this regard—but the court opted to suspend ninety percent of her sentence *and* authorize work release in exchange for restitution to the victim’s family. We agree with the circuit court that Mr. Lucas’s death, and therefore his funeral expenses, resulted directly from the conspiracy to which Ms. Caldwell pled guilty, and we see no abuse of discretion in the court’s decision to order restitution.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**