

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2224

September Term, 2014

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IN RE: TANIEL W.

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Leahy,  
\*Zarnoch,  
Rodowsky, Lawrence F.  
(Retired, Specially Assigned),

JJ.

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Opinion by Leahy, J.

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Filed: June 3, 2016

\* Zarnoch, Robert A., J. participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

\*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.

Appellant Taniel W. pleaded involved to second-degree assault for an incident that occurred on May 5, 2014, marking another sad example of violence in our schools. In the adjudication hearing in the Circuit Court for Prince George’s County, sitting as a juvenile court, and throughout the proceedings below, the State made clear its intention to seek restitution for the victim’s medical bills, while counsel for Taniel made clear that there was no agreement as to the amount of restitution.

The disposition and restitution hearing that was scheduled for October 3, 2014 had to be rescheduled to November 3, 2014 because Taniel and her family failed to appear for a scheduled social history investigation. Meanwhile, however, on October 24, 2014, the State filed a motion for restitution, and on October 28, 2014, *before* the scheduled disposition and restitution hearing, the court ruled on the State’s motion, “**ORDER[ING]**, *by agreement of the parties* that Restitution in this matter is assessed \$4,689.00[.]”

On appeal from the grant of the restitution order, Appellant asks this Court to consider whether “the judgment of restitution against Taniel W. [was] unlawful in that it was issued without a hearing.” We conclude it was, and so we vacate the restitution order and remand for a hearing.

### **BACKGROUND**

Appellant Taniel W. was charged by petition in the Circuit Court for Prince George’s County with second-degree assault and willful disturbance of school activities for an event that occurred on May 5, 2014. The petition alleged that Taniel punched a classmate (“the victim”) in the face and body and caused damage to the victim’s nose and teeth. The petition contained a complaint for restitution. Taniel pleaded involved to

second-degree assault in an adjudication on September 5, 2014. The court accepted Taniel's plea and found her to be involved as to the second-degree assault charge.

During the September 5, 2014 adjudication hearing, the State re-announced its intent to seek restitution, but the State and Taniel could not agree on an acceptable dollar value for restitution. Taniel's counsel informed the court that "we simply haven't agreed to it yet. . . . We may come to an agreement." Later in the hearing, after Taniel's counsel asserted that Taniel was taking responsibility for the incident, the following colloquy occurred:

THE COURT: Wait, taking responsibility. Pay the victim restitution and take responsibility.

[TANIEL'S COUNSEL]: **We absolutely will come to an agreement.**

THE COURT: So, the victim has to come back again.

[TANIEL'S COUNSEL]: I don't think that --

THE COURT: I know that.

[TANIEL'S COUNSEL]: -- I don't think, Your Honor, any failing to come to an agreement on restitution is not [Taniel's] part. It's the failing of her lawyer to, I mean, we were --

THE COURT: When you say "take responsibility."

[TANIEL'S COUNSEL]: We were arraigned on the 20th. This is a two-week turnaround from arraignment. So we don't have -- I cannot advise my client with the document that I've seen to pay restitution at this time.

I'm not suggesting that my client in any way indicates that she thinks that we need to have a restitution hearing. What I'm saying is that I can't advise her yet on that. So we -- we're at this point given the information that we have to sign a restitution agreement. That doesn't mean we won't. We're just asking for --

THE COURT: Doesn't that mean that the victim has to come back and they don't come back, and then what?

[TANIEL'S COUNSEL]: **Well, I think -- I have indicated that I will be in touch with [the State's counsel] about restitution, and we will definitely try to come to an agreement.** It's not -- it is not an indication of lack of remorse. It is not an indication that my client is unwilling to come to an agreement. There are just some discrepancies in what was given to us, and it does not come anywhere near the total that they're talking about. **So before we even agree to agree to an amount, we would like to determine the basis for it. . . .**

(Emphasis supplied).

No agreement was ever reached. Taniel's counsel requested a disposition and restitution hearing, which was scheduled for October 3, 2014. That hearing was postponed to November 3, 2014, because Taniel failed to appear for a scheduled social history investigation.

On October 24, 2014, the State filed a motion for restitution, requesting that Taniel pay \$4,689.00 to the victim. The motion stated that, “[a]t the plea hearing, **[Taniel] agreed to pay restitution** to the victim due to the victim's injury from the assault, requiring surgery and complex post-care (for facial fractures and broken jaw bone.)” (Emphasis supplied). The State attached to the motion a medical bill from the victim's oral surgeon displaying a \$4,689.00 balance. Taniel did not file a written motion in response to the State's motion.

Several days later, on October 28, 2014, *before* the scheduled disposition and restitution hearing, the court ruled on the State's motion, “**ORDER[ING]**, *by agreement*

*of the parties* that Restitution in this matter is assessed \$4,689.00[.]”<sup>1</sup> Both Taniel and her parents were responsible for this amount. This judgment was indexed on October 31, 2014. (Bold emphasis in original; italics emphasis supplied).

At the November 3, 2014 hearing,<sup>2</sup> the court asked the State’s counsel whether the restitution issue had been resolved, and the State responded, “Yes. The Court ordered the restitution[,] and it’s been indexed.” Then, the following colloquy concerning restitution occurred:

[TANIEL’S COUNSEL]: . . .

**Furthermore, with respect to the restitution in this case, we have a separate hearing set for that today. There has been no agreement yet for that restitution. The State did file a motion but --**

[THE STATE’S COUNSEL]: **That’s not correct.**

[TANIEL’S COUNSEL]: **-- there was a hearing already set on that motion. We haven’t agreed to -- and I think -- the State and I were discussing restitution prior to today,** I think, I don’t believe, I have not yet received a signed or index[ed] order.

\* \* \*

[TANIEL’S COUNSEL]: -- we’re entitled to a separate restitution hearing . . . I did receive a motion by the State for restitution but we are entitled to a hearing to address that and we are expecting one today. I don’t know why the State has presumed that the motion would address without the hearing that is already set on the docket for today that the restitution -- it’s not a consent motion. It is not -- we’re entitled to the opportunity to respond and this hearing is the appropriate time to --

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<sup>1</sup> The order also provided “that execution of the judgment is hereby stayed pending payment through the Department of Juvenile Services, at the rate of \$[illegible] per month until paid payable on the first day of each month.”

<sup>2</sup> One circuit court judge presided over the September 5 hearing and signed the order for restitution, whereas a second circuit court judge presided over the scheduled November 3 disposition and restitution hearing.

THE COURT: **According to the motion, [Taniel] agreed to pay restitution as a result of the plea. Yes or no?**

[TANIEL'S COUNSEL]: **No.**

[THE STATE'S COUNSEL]: **No, . . . that was a term of the plea agreement.**<sup>[3]</sup>

[TANIEL'S COUNSEL]: **We did not agree to a set amount of -- we agreed that there would be restitution paid in this case. We did not agree to the amount of the restitution.**

[THE STATE'S COUNSEL]: And, Your Honor, the State provided from the time period of the plea until now even to the Court in its motion a copy of the hospital bills and the doctor's records. There was --

THE COURT: So do you dispute the amount?

[TANIEL'S COUNSEL]: What we have an issue with is that, on one of the bills that we've received, the victim noted a Medicaid payment. On a separate bill --

\* \* \*

[TANIEL'S COUNSEL]: -- there was what looks to be co-payments but no insurance payments. So we would like to inquire the status of insurance payments on the outstanding medical bills. They are substantial and are medical in nature, and we're confused as to why there would be medical - why there would be insurance payments on one portion of the medical bills and not on another portion of them. We're just wondering what the actual total outstanding amount will be at the end of the day --

[THE STATE'S COUNSEL]: And those --

[TANIEL'S COUNSEL]: -- for the victim.

[THE STATE'S COUNSEL]: -- and those records were provided by the Court with the State's motion. The Court considered and ordered the restitution be paid. There are two exhibits attached to the State's motion.

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<sup>3</sup> Restitution was not a term of the written plea agreement.

THE COURT: Well, I will say that [the first circuit court judge] signed it because of the statement that she submitted from the dentist that's to the amount of \$4,689.

[TANIEL'S COUNSEL]: And unfortunately there's -- there is no testimonial evidence on the record tying that to what happened. We have to object to that order and to the motion without a hearing.

\* \* \*

[TANIEL'S COUNSEL]: . . . The issue is to inquire as to status -- as to the status of insurance payments, and insurance eligibility. It would be, I think, unjust enrichment for us to be -- to have a judgment in place and then insurance money to be collected on this if there's insurance eligibility, and we do have documentation provided by the State --

[THE STATE'S COUNSEL]: There is -- there's Medicaid paid for the emergency room visit. Medicaid didn't cover the specialist's performance of the wiring of the jaw and all the subsequent follow-up visits for that, and that is why the doctor who performed it, who is associated with Prince George's Hospital as their oral surgeon, provided that bill.

**If we were to have a restitution hearing, that would -- that bill would be admissible, and so that's the same thing that would happen at the hearing. The [first] Judge took it into consideration and having no objection from -- having nothing filed by the defense in objection to it, the [first] Judge ordered it.**

[TANIEL'S COUNSEL]: **We're entitled to the hearing, and the hearing was already set, so any argument can be heard at the hearing.**

THE COURT: You can argue this with [the first judge] all you want, but he signed the order already for \$4,689.

[TANIEL'S COUNSEL]: And I would --

THE COURT: You can ask [the first judge] to set this aside, but it's signed.

[TANIEL'S COUNSEL]: -- we would object.

THE COURT: And ended. You can't object to me. I'm telling you [the first judge] signed it. If you want -- and I'll give you a copy of it, so if you

want to file something to undo it, that's on you. But right now it's in here, it's indexed and it's a fact.

[TANIEL'S COUNSEL]: I understand, Your Honor. For the record we would –

[TANIEL'S] MOTHER: Can we have time to pay it?

[TANIEL'S COUNSEL]: -- for the record we would note that we are entitled to a separate restitution hearing and that's what we came here prepared for today.

THE COURT: **And for the record, we ask for them all the time and agree before the actual date of the disposition.**

[TANIEL'S COUNSEL]: Correct, but having –

THE COURT: And I just made this copy for you so you could see exactly what he signed, when he signed it, but arguing with me is not going to help you because --

[TANIEL'S COUNSEL]: I'm just --

THE COURT: -- I didn't do it.

[TANIEL'S COUNSEL]: -- I understand, Your Honor, and I'm just trying to make my record because we are here also for the restitution hearing, and I feel that I have to make the record that we object to the procedure that was used for that.

THE COURT: \$4,689 right there.

[TANIEL'S COUNSEL]: With respect to the disposition hearing, which obviously you're right, there should be a separate hearing from the restitution hearing.

THE COURT: Right.

[TANIEL'S COUNSEL]: We do note, and I think part of where the State is coming from is that we agreed that at some point we should try in advance to work out the restitution amount, but we never -- unfortunately never came to an amount we would agree to. At the end of the day, my client has taken full responsibility for what happened.



(Emphasis supplied). This concluded the argument concerning the restitution order. Following this, the court ordered Taniel committed to Level C, Safe Passages.

Taniel filed a timely notice of appeal of the restitution order on November 24, 2014.

### **DISCUSSION**

Taniel argues that the order of restitution, entered without the requested hearing, was unlawful. She contends that due process requires the court hold a restitution hearing before entering an order for restitution.

The State argues that Taniel agreed to pay restitution during the September 5, 2014 adjudication hearing and that, as a result, it was legal for the court to order restitution because the only remaining question was the amount of restitution to which the victim was entitled. The State contends that Taniel was on notice that restitution would be sought and agreed that some restitution was appropriate. Because of this, and the fact that the State provided documentation of the victim's dental expenses, the State maintains that Taniel received due process. The State further contends further that, although a hearing is normally required, in this case it was not necessary because Taniel already agreed to pay some restitution.

It is clear that restitution was permitted by law in the present circumstance. Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article ("CP"), § 11-603 provides, in pertinent 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;
- (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 . . .

The present situation clearly falls within the statute allowing restitution. Therefore, we review the juvenile court for abuse of discretion. *In re Don Mc.*, 344 Md. 194, 200-01 (1996).

Taniel was entitled to a hearing on the issue of restitution. *In re Herbert B.*, 303 Md. 419, 424-25 (1985). We also note that the restitution order specifies that both Taniel and her parents are responsible for payment of restitution to the victim. In fact, Taniel’s mother attended the November 3, 2014 disposition hearing and asked whether she could have time to pay the restitution judgment. Although the parties have not recognized this issue, Taniel’s parents were also statutorily entitled to a hearing. Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article (“CP”), § 11-604(c) provides:

(a) . . . if a child is the defendant or child respondent, the court may order the child, the child's parent, or both to pay restitution.

\* \* \*

(c) *Rights of parents.* — (1) A court may not enter a judgment of restitution against a parent under . . . this subtitle unless the parent has been afforded a reasonable opportunity to be heard and to present evidence.  
(2) A hearing under this subsection may be held as part of the sentencing or disposition hearing.

The Court of Appeals, applying the predecessor statute codified at § 3-829 of the Maryland Code (1974, 1984 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”),<sup>4</sup> instructed that, “a restitution hearing is required under [CJP] § 3-829(a) where the victim seeks restitution against the parent of a child or the child.” *Herbert B.*, 303 Md. at 424-25.

The entry of an order of restitution also implicates due process. *See In re Earl F.*, 208 Md. App. at 279 (analyzing whether the entry of an order of restitution against a juvenile offended due process). In *Chaney v. State*, a case set in the adult criminal context, we stated that

[b]ecause restitution is part of a criminal sentence, as a matter of both Constitutional due process and Maryland criminal procedure, **such an order 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

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<sup>4</sup> The statute, which was superseded by CP § 11-604, provided, in pertinent part:

- (a) The court may enter a judgment of restitution against the parent of a child, or the child in any case in which the court finds a child has committed a delinquent act and during the commission of that delinquent act has:
- (1) Stolen, damaged, or destroyed the property of another;
  - (2) Inflicted personal injury on another, requiring the injured person to incur medical, dental, or funeral expenses.

\* \* \*

(d) A restitution hearing to determine the liability of a parent or child, or both, shall be held not later than 30 days after the disposition hearing and may be extended by the court for good cause.

(e) A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf. A hearing under this section may be held as part of an adjudicatory or disposition hearing for the child.

and evidence that such loss or expense was a direct result of the defendant's criminal behavior.

397 Md. 460, 470 (2007) (emphasis added) (citation omitted). Although this case is set in the adult criminal context, not the juvenile context, numerous juvenile cases hold that a juvenile is entitled to an opportunity to be heard before the entry of an order of restitution.

In *Earl F.*, the State alleged via juvenile petition that Earl F. was involved in the commission of robbery, second-degree assault, and theft of property valued less than \$100. 208 Md. App. at 271-72. During the disposition hearing, the victim testified that an amount closer to \$900.00 had been stolen from him, and the prosecutor made it clear that the State was seeking \$900.00 in restitution from Earl. *Id.* at 273. When defense counsel pointed out that the charging document recited only a loss of \$10.00, the court directed that a separate restitution hearing be held. *Id.* At the restitution hearing, the victim testified that Earl F. had stolen \$900.00 from him, and based on this testimony, the juvenile court rejected Earl's argument that restitution should be limited to the amount that the charging document noted. *Id.* at 274.

On appeal, we determined that Earl F. had been afforded due process, and stated that

we discern[ed] no violation of [Earl F.'s] due process rights. [Earl F.] and his mother were alerted to the fact that the State would attempt to prove an amount of loss greater than the ten dollars cited in the delinquency petition. An amount of loss greater than ten dollars was made clear from Patel's testimony at the adjudicatory hearing. The greater amount was also made clear at the subsequent disposition hearing. **In fact, a separate restitution hearing was conducted of the claim of a greater amount, and appellant's objection. Finally, at the restitution hearing, the amount claimed was made clear. The victim was cross-examined by defense counsel, and his**

**testimony was clearly sufficient to sustain the juvenile court's findings as to the amount of his loss.**

*Id.* at 279 (emphasis added).

In *Richards v. State*, an adult criminal case, the defendant was found guilty, and the court ordered restitution, but it delegated the specific amount of restitution to the Division of Parole and Probation. 65 Md. App. 141, 142, 146 (1985). The Court of Special Appeals held, as a matter of Maryland constitutional due process, that “the direction of the trial court that the Division of Parole and Probation determine 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 defendant. *Id.* at 149. The Court stated that this delegation “effectively denied [the defendant] the right to be heard.” *Id.*

In *In re James B.*, the juvenile, James B., pleaded involved to the offenses of breaking with intent to steal and malicious destruction of property, and he agreed to immediate disposition. 54 Md. App. at 270, 271 (1983). The court then found James B. to be delinquent and *sua sponte* ordered him to pay \$331.00 of restitution. *Id.* at 271, 274. James B. objected to the order of restitution and requested a restitution hearing, which was granted. *Id.* At the restitution hearing, the court increased the amount of restitution to \$451.55 and held the juvenile and his mother jointly and severally liable. *Id.* at 271-72.

On appeal, James B. argued that he was not put on notice as to the extra \$120.00 ordered at the restitution hearing. *Id.* at 278. The Court of Special Appeals agreed with the juvenile and stated that, “[a]lthough he knew as of May 13th, 1982 that the State on June 4, 1982 would attempt to prove damages in the amount of \$331.55, he was not notified

of the \$120.00 claim until the time of the June 4th hearing. This offends basic principles of due process. He was entitled to notice and the opportunity to be heard.” *Id.* (citation omitted). The Court then vacated the judgment for restitution and remanded the case for a further evidentiary hearing to challenge the \$120.00. *Id.* The Court also vacated the restitution judgment as to the mother because she never been served with the delinquency petition, and thus, she was not afforded due process. *Id.* at 279-80.

Clearly these cases affirm the principle that a defendant is afforded due process when she is provided notice and an opportunity to be heard. *See, e.g., In re Earl F.*, 208 Md. App. at 279; *Richards*, 65 Md. App. at 149; *In re James B.*, 54 Md. App. at 271-72. In the case before us, we observe that Taniel had notice that the State was seeking restitution, and she had notice of the amount of restitution the State was seeking because the medical bills provided to her and the court were the basis for the restitution. The failure here was that Taniel (and her parents) were not afforded the opportunity to be heard. The State filed a motion for restitution on October 24, 2014, stating that Taniel “agreed to pay restitution” when in fact Taniel had not agreed to the amount of restitution. Rather than wait to address the issue at the restitution hearing scheduled for November 3, 2014, the circuit court granted the State’s motion. We conclude that, under these circumstances, Taniel was not provided “the opportunity to be heard,” *see id.* at 278, and therefore, Taniel was not afforded due process. We therefore remand for a restitution hearing.<sup>5</sup>

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<sup>5</sup> Nothing in this opinion should be read to endorse the merits of Taniel’s argument below concerning the insurance payments for the victim’s medical bills.

Taniel also argues that the circuit court failed to consider Taniel's ability to pay the restitution amount, and that the disposition hearing judge erred in refusing to reconsider the adjudication judge's order. In light of our decision on Taniel's right to a hearing, it is unnecessary for us to address these arguments.

**RESTITUTION JUDGMENT OF  
THE CIRCUIT COURT FOR  
PRINCE GEORGE'S COUNTY,  
SITTING AS A JUVENILE COURT,  
VACATED. COSTS TO BE PAID BY  
PRINCE GEORGE'S COUNTY.**