

Circuit Court for Wicomico County
Case No. C-22-JV-20-000157

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 451

September Term, 2021

IN RE: R.S.

Beachley,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 1, 2022

*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.

This case stems from a restitution hearing in the Circuit Court for Wicomico County, sitting as a juvenile court. The State charged R.S. in a delinquency petition with six counts: fourth-degree burglary, two counts of conspiracy to commit fourth-degree burglary, malicious destruction of property of a value exceeding \$1,000, and two counts of conspiracy to commit malicious destruction of property of a value exceeding \$1,000. R.S. admitted his involvement in the fourth-degree burglary, and the State nol prossed the remaining counts. At disposition, the juvenile court placed R.S. on probation with conditions. One condition required R.S. to pay \$900 in restitution jointly and severally with his co-respondents. R.S. timely appealed and presents two questions for our review, which we have consolidated and rephrased as follows: Did the juvenile court err when it ordered R.S. to pay restitution?

As we shall explain, we answer this question in the affirmative. Accordingly, we reverse the judgment of restitution and strike the condition of probation that required R.S. to pay restitution.

BACKGROUND

At the adjudication hearing in April 2021, the State provided the following factual basis to support R.S.'s fourth-degree burglary admission:

On October 3rd, 2020, officers responded to 706 Lincoln Avenue, which is in Salisbury, located in Wicomico County, Maryland, in reference to a possible burglary in progress. Upon arrival they made contact with the victim in this case, who is Jean Talabert. He stated that, as the owner of the home, he was on scene and he witnessed three subjects entering the home without permission through the first floor window.

It's later indicated that, as the officers responded inside the home, they were searching the home, and at that time they heard noise coming from the

opposite side of the house. One of the officers went to investigate the noise and observed a subject . . . who would be identified in court as [R.S. . . .]

They observed [R.S.] jump the fence out of the above stated property in an attempt to flee the scene. Officers then detained the subject.

The court held a restitution hearing the following month. At that hearing, the complainant, Mr. Talabert, was the only witness who testified for the State.

Mr. Talabert testified that at some point in 2020, he evicted tenants at his property for failing to pay rent. R.S. was not one of these tenants. After the eviction, unidentified individuals entered the property and damaged its doors and windows. Frustrated with the damage to his property, Mr. Talabert decided to hide in the closet in order to catch the perpetrators. In the early morning hours of October 3, 2020, Mr. Talabert, while hiding at the property, heard what sounded like multiple people enter, and he called the police. Police arrived and caught R.S. leaving the house.

At the conclusion of the restitution hearing, the circuit court acknowledged that Mr. Talabert’s “testimony was a little muddled,” but nevertheless found that it was sufficient to establish that R.S. caused damage to the property’s doors and windows. Accordingly, the court ordered R.S. to pay \$900 in restitution.¹

STANDARD OF REVIEW

Similar to an illegal sentence, an illegal order for restitution may be challenged at any time. *See Goff v. State*, 387 Md. 327, 340 (2005) (citing *Walczak v. State*, 302 Md. 422, 427 (1985)). “Generally, an appellate court reviews a circuit court’s order of

¹ Noting that R.S. was not alone when he was caught, the court ordered that R.S. pay the restitution “jointly and severally” with his co-respondents.

restitution for abuse of discretion.” *In re G.R.*, 463 Md. 207, 213 (2019) (citing *In re Cody H.*, 452 Md. 169, 181 (2017)). But if the circuit court’s order involves “an interpretation and application of Maryland statutory and case law[,] we review its decision de novo.” *Id.* (quoting *Goff*, 387 Md. at 337-38).

DISCUSSION

R.S. contends that the court imposed an illegal sentence when it required him to pay restitution for damage to the property that was caused by other unknown individuals at unknown times. R.S. also argues that the court’s restitution order was erroneous because the State failed to show that the damage to the property was a direct result of R.S.’s delinquent act. The State responds that the restitution award was proper because there was circumstantial evidence supporting a reasonable inference that R.S. damaged Mr. Talabert’s property. As we shall explain, Mr. Talabert’s testimony at the restitution hearing provided an insufficient evidentiary basis to show that the damage to the property’s doors and windows was a direct result of R.S.’s delinquent conduct. Accordingly, we shall reverse the restitution order and strike the condition of probation requiring R.S. to pay restitution.

In a juvenile delinquency proceeding, the court may order restitution upon findings that satisfy Md. Code (2001, 2018 Repl. Vol.), § 11-603(a) of the Criminal Procedure Article (“CP”):

A court may enter a judgment of restitution that orders a . . . child respondent to make restitution in addition to any other penalty for the commission of a . . . delinquent act, if:

(1) *as a direct result of the . . . delinquent act*, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased; [or]

(2) *as a direct result of the . . . delinquent act*, the victim suffered: . . .

(ii) direct out-of-pocket loss[.]

(Emphasis added.)

This Court has previously noted that CP § 11-603(a) “requires a direct causal connection between a juvenile’s delinquent act and the actual expenses suffered by the victim as a condition to an award of restitution.” *In re Delric H.*, 150 Md. App. 234, 248 (2003) (citing *In re Levon A.*, 361 Md. 626, 639-41 (2000)). The State bears the burden to produce competent evidence showing that the victim is entitled to restitution. *Juliano v. State*, 166 Md. App. 531, 540 (2006). The State also bears the burden to produce competent evidence to establish the amount of restitution owed. *Id.* “Competent evidence of entitlement to, and the amount of, restitution need only be reliable, admissible, and established by a preponderance of the evidence.” *In re Cody H.*, 452 Md. 169, 192 (2017) (quoting *McDaniel v. State*, 205 Md. App. 551, 559 (2012)).

Here, the State failed to establish, by a preponderance of the evidence, that R.S. caused damage to Mr. Talabert’s property. Accordingly, there is no direct causal connection between R.S.’s delinquent act and the restitution order.

We agree with the circuit court that Mr. Talabert’s testimony “was a little muddled[.]” Nevertheless, Mr. Talabert’s testimony reveals that the property was damaged, at the latest, the day *before* R.S. was apprehended by the police.

[THE STATE]: [A]t what point in time did you start to notice damage to the property?

[MR. TALABERT]: So, basically, so I'll go to the house, you know, like time to time, so, sometimes I went to the house twice a week, sometimes, or if I was busy I been, maybe I might go in the house every two week.

So one day I went to the house but, I mean, I see they bust the window, they bust the door, *so I don't know who did it, so I'll just leave it like that.* So I just call, I call the police, I call the police but they was coming, you know, they look at everything in the house, you know, something, you know, I have in the house it was missed, so they said, well, so they don't have no, they cannot find nobody to (unintelligible . . .) the house. They say, well, so they go on (unintelligible . . .) about the house, they said that they go past back time to time. So one day I was in my house about one o'clock in the morning, so I went to the house. When I went to the house one o'clock in the morning, I heard some people walk in the back, in the back door. When I heard people walk in the back door, so I just, you know, just hide by the closet. At the same time I see three guy come inside, they kicked the door, they kicked the door, they come inside there, in the house. I went outside, I just call cop. When I call cop, so when the cop come in they find three or four guy inside the house, *but I mean they, the house been bust before. The house been bust before. When I, you know, when I see the house been bust, so when I come, you know, the next, next day I was, you know, hiding in the house that's why I catch 'em, you know, they was come inside the house, again, because the house already bust.*

(Emphasis added).

Although not a model of clarity, Mr. Talabert's testimony established that the property was already damaged prior to the day he went to the property to hide in wait for the perpetrators. It was on the day that R.S. was arrested for unlawfully entering the property.

Not only did Mr. Talabert testify that the damage occurred sometime prior to the day of R.S.'s arrest, but he was never able to testify as to when the damage actually occurred:

[THE STATE]: Now, when you indicate that the house was already busted, what do you mean, what do you mean by that?

[MR. TALABERT]: I mean they bust the window. They bust the door. They was come inside, in the house. So the next day when, the first time when I come in the house, I see the house, you know, they bust the house, so --

[THE STATE]: To clarify, when you say the first time you went into the house, do you have dates or anything like that?

[MR. TALABERT]: I don't remember the date but, I mean, I don't keep that in my mind.

In fact, Mr. Talbert's testimony suggested that the damage took place over a period of time rather than on a single occasion:

[THE STATE]: Okay. And I know your house has been broken into several times --

[MR. TALABERT]: Exactly.

[THE STATE]: -- correct? Do you recall that, the incident in question where the three people came in early in the morning, was that the first incident where

someone had broken into your house, or was that the second, was that the third?

[MR. TALABERT]: It was the third time, they did it at the same day.

[THE STATE]: So that was the first time?

[MR. TALBERT]: No, it was the third time –

[THE STATE]: Second time?

[MR. TALABERT]: -- they, they broke in at the same day. I don't even know exactly, so, probably might be more people come in the house all the time, but, I mean, I don't even know. But, I mean, what I saw that's when I knew, you know, people broke in the house.

Although his testimony was confusing, Mr. Talabert consistently indicated that the damage occurred over a period of time:

[THE STATE]: We're trying to figure out at what point in time it was not damaged, and then at what point in time it was damaged.

[MR. TALABERT]: The house in the good condition like I was telling you that, it was in good condition, no damage.

[THE STATE]: Okay.

[MR. TALABERT]: So, when I went through the, when I come in, when I went to the house, *so after three week, I see the window bust, the door was bust, when I was inside the house four door was bust upstairs. So I mean, I just left. When I was left, I come back next day, when I come back next day, I hide in the house. When I was hide in the house, one o'clock in the morning I heard people talk in the background. When I heard the people talk in the background, I hide. So they was come in the front door, why they bust the door because the door cannot be locked. So they kick in again, when*

they kick in again they come inside, when they was come inside that's when I went outside, I was call the police.

(Emphasis added).

Mr. Talabert made clear that he hid in order to catch the people who had *already damaged* the property:

So the house was bust, because the house not, the house was not bust in the beginning, but, I mean, *when I was come in next day the house was bust, because it already bust, that's why I was inside, to stay inside the house, I was in the house when I was in, inside the house that's when they was come in again.* So which is they use the house, like, you know, like they, they want to have fun, whatever, you know, you have in the house they take, you know, they take it. They think the house is like that's them house, they can come any time they want. Because they bust the window. They bust the door. So, which is no way you can stop them coming in the house.

(Emphasis added).

We deduce from Mr. Talabert's testimony that, subsequent to him evicting a previous tenant, unidentified individuals came to his property over a period of time and damaged the doors and windows. In an effort to catch the perpetrators *who had already damaged his house*, Mr. Talabert hid in the closet. Because R.S. was only caught entering the property the night Mr. Talabert hid in the closet, and because Mr. Talabert never claimed that R.S. damaged his property the same night he was caught, there was simply no evidence connecting R.S.'s unlawful entry on that occasion to the destruction of Mr. Talabert's property. On this record, any restitution order against R.S. for damages he caused on the night of the burglary would be based on mere conjecture and speculation.

The State suggests that the restitution award is proper because R.S. admitted to his involvement in a fourth-degree burglary, and there is a close relationship between that

offense and the damage to the property. But regardless of the relationship between the offense and the restitution sought, the fact remains that the State must prove that the restitution award is a direct result of the delinquent act under CP § 11-603(a).² Although we are cognizant of our deferential standard of review, the evidence here is simply insufficient to establish the requisite causal connection between R.S.’s delinquent act and the damage to the property. *See In re Levon A.*, 361 Md. at 640-41 (reversing restitution order for damage to property where evidence showed that delinquent minor was simply a “passive passenger in the car,” and had no involvement with the collision that caused the damages). Accordingly, the restitution award was improper, and must be reversed.

**JUDGMENT OF RESTITUTION OF THE
CIRCUIT COURT FOR WICOMICO COUNTY
REVERSED AND PROBATIONARY
CONDITION REQUIRING APPELLANT TO
PAY RESTITUTION IS STRICKEN. COSTS
TO BE PAID BY WICOMICO COUNTY.**

² The State also suggests that the court’s disbelief of R.S.’s testimony supports an inference that he was involved in damaging the house. But the State’s evidence overwhelmingly contradicted that inference. Indeed, the State’s evidence established that the house had been damaged before the night R.S. was caught, and that Mr. Talabert did not know who damaged the house.