Circuit Court for Baltimore City
Case No. 120069008

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1027

September Term, 2022

DAJUAN REEDER

v.

STATE OF MARYLAND

Graeff,
Berger,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: May 17, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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.

A jury in the Circuit Court for Baltimore City found Dajuan Reeder, appellant, guilty of reckless endangerment, unauthorized removal of property, driving with a revoked license, and driving with a suspended license. The court sentenced appellant on the conviction for reckless endangerment to five years' imprisonment, all but two years suspended, with supervised probation for three years, during which time appellant was to make restitution in the amount of $4,139.50 to Olusegun Edidi, the victim.[1] The court also sentenced appellant to four years, consecutive, all suspended, on the conviction for unauthorized removal of property, one year, consecutive, all suspended, on the conviction for driving with a revoked license, and a $500 fine, which was waived, on the conviction for driving with a suspended license.

On appeal, appellant presents the following question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court err in ordering restitution for expenses that were not the "direct result" of appellant's convictions, but instead, were associated with conduct that resulted in acquittals?

For the reasons set forth below, we shall reverse, in part, the judgment of restitution.

[1] As discussed in more detail *infra*, the $4,139.50 restitution award was based on the following: (i) $500 (property insurance deductible to "Autobody Alusia of Parkville"); (ii) $265 (towing charge to Baltimore City Towing); (iii) $1,049 (medical bill for "damage to [Mr. Edidi's] teeth" to Mitcherling and Mitcherling Dentists); (iv) $437.50 (medical bill for eye exam); (v) $237 (medical insurance payment to Allstate); (vi) $438 (first medical bill to Johns Hopkins); (vii) $770 (medical bill for ambulance); and (viii) $443 (second medical bill to Johns Hopkins).

FACTUAL AND PROCEDURAL BACKGROUND

I.

Trial

This appeal arises from a traffic incident in February 2020 that escalated into a physical confrontation between appellant, then 22 years old, and Mr. Edidi, then 69 years old. Trial began on May 23, 2022. In opening statement, the prosecutor stated that, on the morning of Tuesday, February 11, 2020, appellant engaged in an incident of "road rage" against Mr. Edidi on Wabash Avenue in Baltimore City. Mr. Edidi pulled into the parking lot of a nearby daycare center to call the police, and appellant did so as well. Appellant then "got out of his car and punched Mr. Edidi in the face." Appellant punched Mr. Edidi "so hard that he suffered bilateral fractures to both eyes," and a "detached retina" in one of his eyes that "he had to have surgery for," which "continue[d] to affect him to this day." Appellant then got into Mr. Edidi's vehicle, a black Toyota RAV4, crashed it into a fence in the back of the parking lot, and attempted to flee the scene in his own car, a silver Honda Accord. An off-duty K-9 Unit Officer, Patrick Huter, subsequently stopped him on Wabash Avenue.

Defense counsel asserted during opening statement that appellant and his girlfriend, Jewel Little, were driving down Wabash Avenue to bring Ms. Little's minor daughter, H.,[2] to elementary school, when Mr. Edidi came "in off of a side street," entered onto Wabash

[2] We will refer to the minor child by initial. *See In re G.T.*, 250 Md. App. 679, 683 n.1 (2021).

Avenue, and struck appellant's car. The defense was that it was Mr. Edidi—not appellant—who was "driving aggressively."

Defense counsel stated that appellant followed Mr. Edidi into the parking lot of the daycare center, "a verbal argument" ensued, and Mr. Edidi attempted "to pull [open] the passenger door of [appellant's] car." Appellant exited his car and confronted Mr. Edidi, asking him: "what are you doing, why are you trying . . . to get into the car?" At that time, another man, Esteban Hernandez, came onto the scene, and a physical altercation started, and "it's two on one at that point." Appellant acted in self-defense. Because Mr. Edidi's vehicle was blocking appellant's ability to leave the scene, appellant got into the RAV4, "move[d] it forward a little so that he could get out of there," and he "neglected to place [it] in park," which caused it to "roll[] into a fence at the end of the daycare center." Appellant was not trying to steal the RAV4. He was not "looking for trouble," but only trying to "get a path out of that parking lot."

Officer Huter testified that, at approximately 8:00 a.m., on February 11, 2020, he was driving on Wabash Avenue. He ultimately stopped appellant, who was driving a silver Honda Accord. During the stop, Officer Huter ascertained that appellant's driver's license was suspended and revoked by the Maryland Motor Vehicle Administration, i.e., he did "not have permission to be driving a vehicle on public roadways." Ms. Little, who was in the car with appellant and H., "jumped out of the car." Then "the people from the parking lot," i.e., Mr. Edidi and Mr. Hernandez, "came over and they started . . . arguing." Officer

Huter had appellant remain in the Accord because, at that point, he was the only officer at the scene.

The prosecutor played the initial 911 call to the jury. The caller, an unidentified woman, told the operator that she was calling from a daycare located at 5218 Wabash Avenue, and "somebody just got assaulted really bad, an old guy." She stated: "A younger guy is standing here fighting an older man. They're still fucking going."

Detective Latarsha Young, a member of the Baltimore Police Department, testified that she received a call about the alleged assault. At the scene, she observed two vehicles involved in an accident. "One vehicle was [i]n the parking lot, and the other vehicle was parked" on Wabash Avenue. The parties were screaming at each other, but she did not witness any physical altercation.

Detective Young identified the driver of the vehicle in the parking lot, a black Toyota RAV4, as Mr. Edidi. There was "collision damage" present on the RAV4 from "a possible . . . sideswipe," which was on the driver's side of the vehicle, and "damage to the front from being struck into a [fence]." Mr. Edidi was transported by ambulance to the hospital, where Detective Young performed a "condition check" on him and noticed that "both of his eyes were swollen and black. He had two black eyes, and . . . his face was . . . pretty swollen."

Mr. Hernandez was present when Detective Young arrived at the scene. He did not, however, stay there long. He stated to Detective Young "that he had to go to work," and

"he gave [her] his information and said that he had to go." Detective Young agreed that Mr. Hernandez "was a pretty well built individual."

Ms. Little and her daughter, H., were present when Detective Young arrived at the scene. Both were occupants of appellant's vehicle, which was damaged on the passenger side.[3] Appellant also was present when Detective Young arrived at the scene; he had no injuries that she saw. No one other than Mr. Edidi had any injuries. During the course of her investigation, she spoke with appellant, and she received information that appellant had been fighting with Mr. Edidi.

Mr. Edidi testified that, on the date of the incident, he was on his way to work as a Real Estate Development Officer with the Baltimore City Department of Housing. He was traveling in the middle lane of Wabash Avenue. "There was a car on the right-hand side" of the road, and as he approached the daycare center, there was a parked car in "the first lane."[4] As he "came up on the car that was parked," the other car on his right suddenly attempted to "squeeze in" ahead of him.[5] The other car "hit" Mr. Edidi's vehicle and "scratched" it "on the side."

Mr. Edidi then pulled into the parking lot of the daycare center "and tried to call the police." The other car initially "went past the daycare," but when Mr. Edidi pulled into the

[3] Detective Young did not recall seeing any damage on the passenger side of Mr. Edidi's vehicle.

[4] Mr. Edidi noted that, from right to left, Wabash Avenue had "one, two, three lanes."

[5] The trial transcript indicates that Mr. Edidi's testimony was, in part, unintelligible.

parking lot, the other car "reversed back" and "came into the parking lot." Appellant, who was operating the other car, parked it in the first spot on the left, immediately next to the parking lot gate, while Mr. Edidi's vehicle was stopped "mid of the lot" and positioned "towards the next property fence." His vehicle was actually "[i]n the parking lot" and "not against the fence."

Mr. Edidi exited his vehicle with his phone in his hand, and he started shouting to the daycare personnel, hoping that someone would hear him and call the police. He "was trying to call the police and get the attention of someone." He denied approaching appellant's vehicle or exchanging words with appellant while in the parking lot.

Appellant then "came out of his car" and said to him: "[W]hat are you doing?" Appellant then "hit" Mr. Edidi "a couple of times," including in his eye. This caused Mr. Edidi to fall to the ground. After appellant hit Mr. Edidi, another gentleman, i.e., Mr. Hernandez, came on the scene, lifted Mr. Edidi up from the ground, and shouted at appellant: "[W]hat are you doing?" Mr. Edidi testified that Mr. Hernandez did not strike appellant, and he denied fighting with appellant during the incident.

Appellant then went to Mr. Edidi's truck and threw open the door. Mr. Edidi never gave appellant permission to get into his car. Appellant then "drove [Mr. Edidi's] car into the fence," got into his own car, and drove out of the parking lot. Mr. Edidi denied that his vehicle was blocking appellant's path of egress from the parking lot.

Mr. Edidi had back and shoulder pain "from falling down [onto] the concrete." He was transported from the scene by ambulance and received medical treatment at Johns

Hopkins Hospital. He had two "black eyes" and a detached retina in his right eye. He had surgery to treat the detached retina. He now has to wear glasses and "can't see too well" because "[i]t's still blurry in [his] right eye." His blurry vision was "affecting [his] ability to function," including his ability to read, and he had to retire from his job.

Mr. Edidi testified regarding the damage to his vehicle. There was damage on the rear, driver's side of the RAV4. This damage was caused by appellant when "he pulled behind [Mr. Edidi] and tried to get into the third lane." Additionally, there was damage on the front, driver's side of the RAV4, which was caused by appellant when "he drove [the RAV4] into" the fence. The total cost of repairs to Mr. Edidi's vehicle was approximately $4,000.

Appellant testified that, on the date of the incident, at approximately 8:00 a.m., he was driving down Wabash Avenue with Ms. Little, bringing her daughter to elementary school. As appellant proceeded in the middle lane, another driver entered onto Wabash Avenue from a side street, approached the passenger's side of the Accord, and unsuccessfully "tried to force their way over" into the middle lane. The other driver, who appellant identified as Mr. Edidi, "tried to do it again, because . . . [there] was a parked car in the far right lane, and this time he managed to do it . . . and clipped the front of [appellant's] car." Mr. Edidi side-swiped the Accord near the intersection of Wabash Avenue and Eldorado Avenue. Appellant denied being in the right lane of Wabash Avenue at any point during the incident.

Appellant pulled into the daycare parking lot behind Mr. Edidi on the left-hand side. His vehicle, the Accord, ended up behind Mr. Edidi's vehicle, the RAV4, because Mr. Edidi was the one who "forced his way in front of [appellant]." He was in the parking lot "because an accident had just occurred," and he "was waiting to exchange information and everything." Appellant denied initially driving past the daycare and reversing down Wabash Avenue to the parking lot, stating that it was "impossible" to do so at the time of the incident because there was "too much traffic."

In the parking lot, Mr. Edidi exited his vehicle, holding his cell phone, yelling, and looking angry. Mr. Edidi approached appellant's vehicle, stating "you tried to run me over," and he started "beating" on the passenger side of the Accord. H. was "scared" and "getting worked up," so appellant exited the Accord, "walked around the car," "pushed [Mr. Edidi] back with [his] forearm," and asked Mr. Edidi to "stay off [his] car." He stated to Mr. Edidi: "Stay away from my car. You're scaring my daughter." Appellant denied punching Mr. Edidi at that time.

At some point during the encounter in the parking lot, Mr. Hernandez came onto the scene, approached appellant and Mr. Edidi, and "with his fist up," asked appellant: "[W]hy are you fighting, why [are] you . . . fussing with this old guy?" Mr. Hernandez was "aggressive" and "way bigger." Appellant told him to mind his own business, stating that Mr. Hernandez did not even know what had happened. Mr. Hernandez then started "charging" at appellant "with his fist up, swinging." At that point, a fight broke out between appellant, Mr. Hernandez, and Mr. Edidi.

With Ms. Little's assistance, he extricated himself from the fight and got back into the Accord. Mr. Hernandez and Mr. Edidi began "beating on" appellant's vehicle. Mr. Edidi's vehicle was "blocking" appellant and preventing him from exiting the parking lot. Appellant then exited the Accord, "entered [Mr. Edidi's] car," and "moved it up a little so [he] could make a full U-turn . . . [and] get out of the parking lot." Appellant was not sure if Mr. Edidi's car hit the fence at the end of the parking lot.

As appellant was backing up, Mr. Edidi and Mr. Hernandez were still beating on his car, and they followed him all the way out of the parking lot to Wabash Avenue. Appellant backed out of the parking lot onto Wabash Avenue, but "there was more traffic coming down." Because he "didn't want to back up into traffic," he "moved up a little bit." He successfully backed out of the parking lot onto Wabash Avenue when traffic cleared, at which time he "observed the first officer at the light." Officer Huter made a U-turn at the stoplight and stopped appellant on the side of the road.

Detective Young interviewed appellant at the scene. He answered her questions, "pointed toward" the damage to the Accord, and showed the police "exactly where the side swipe occurred and everything." He told Detective Young that he was on his way to drop his stepdaughter off at elementary school, and he "wasn't trying to be nice when the guy was trying to get over." He stated to her: "I wasn't trying to be nice to traffic. I wasn't . . . allowing anyone to get over." During appellant's interview with Detective Young, Mr. Hernandez kept "interjecting," and when appellant told the police that Mr. Hernandez had

assaulted him, Mr. Hernandez stated to the police: "I got to go. . . . I need to be to work. I'm already running late." At that point, Mr. Hernandez left the scene.

Ms. Little testified that, on the date of the incident, she and appellant were traveling down Wabash Avenue at approximately 8:00 a.m., when another motorist, who she later identified as Mr. Edidi, pulled into traffic from the right and "tried to cut [them] off and side swiped [them]." Mr. Edidi then entered the parking lot of a daycare center, and appellant "proceeded to turn right behind him." Ms. Little "thought [appellant] was pulling over to exchange information."

In the parking lot, Mr. Edidi exited his vehicle and approached the passenger side of the Accord where Ms. Little and H. were seated. He started "banging on the door . . . and saying stuff." He was upset, angry, and screaming, and he "was basically trying to get [them] to get out of the car." Appellant exited the Accord and used his forearm to "back [Mr. Edidi] away" from the car.

At some point during the encounter in the parking lot, Mr. Hernandez came onto the scene, approached appellant and Mr. Edidi, and said to appellant: "[D]on't be fussing with no old man." Mr. Hernandez "put his fist up to [appellant]" as if "he wanted to fight him." A fight then ensued. Mr. Hernandez and Mr. Edidi were "jumping" appellant, and "it was two against one." All three of them were hitting each other.

Ms. Little exited the Accord to get appellant, and he retreated back to the car with Ms. Little. Mr. Edidi's vehicle, however, was blocking the exit. Appellant "got into Mr. Edidi's [car] to move the car out of [the] way." Appellant then returned to the Accord,

pulled out of the parking lot in reverse, and "that's how the police saw [appellant] backing out the car."

After the close of evidence, the court instructed the jury. It instructed that the assault charges required "offensive physical contact to another person." With respect to reckless endangerment, it instructed the jury, as follows:

> The defendant is charged with the crime of reckless endangerment, [and] in order to convict the defendant of reckless endangerment the State must prove that the defendant engaged in conduct that created a substantial risk of death, or serious physical injury to another, that a reasonable person would have not engaged in that conduct, and the defendant acted recklessly.
>
> The defendant acted recklessly if he was aware that his conduct created a risk of death or serious physical injury to another, and then [consciously] disregarded the risk.

The court also instructed the jury on self-defense.

In the State's closing statement, the prosecutor addressed the assault charges and argued that Mr. Edidi sustained a "protracted loss or impartment of a function of . . . his eye." The prosecutor also addressed the charge of reckless endangerment and argued that "[t]he fact that the defendant was driving in that manner, got in a fight in the parking lot, [and] drove the vehicle into a fence would indicate reckless endangerment."

Defense counsel argued that Mr. Edidi was "essentially trying to switch roles. He's the one . . . that caused the damage to [appellant's] car, but he wants to flip it and say, no, I was the one in the middle lane, [appellant] was the one . . . in the right lane." Counsel noted that "Mr. Hernandez's absence has not been explained by the State." Counsel stated to the jury: "[T]he fact that the State did not call him as a witness is an important factor

you should consider." Counsel also argued that the charges of first-degree assault, second-degree assault, and reckless endangerment "are all subject to the court's self-defense instruction," and appellant "acted in complete self-defense."

At 10:55 a.m., approximately half an hour after the jury began deliberating, the court received the following question from the jury: "Does the reckless endangerment charge include the road incident?" The prosecutor asserted that "[i]t does include the entire event." Defense counsel stated that was not argued as the State's theory of the case, and the court's answer should be no. Counsel argued that, had the traffic incident been the basis for a reckless endangerment charge, and he made a motion for judgment of acquittal, that the court may not have let that count go to the jury, but "we all understood that reckless endangerment was the beating, not the road incident." The prosecutor suggested that the court respond by saying: "You may consider all of the evidence presented," which defense counsel stated was "another way of saying yes," and he was "not comfortable" with that because it was something that the State had not argued. Counsel asked that the court "answer in the negative, because I think that's given the theory of the case." The court responded to the jury in writing, as follows: "You may consider all of the evidence you believe is warranted in reaching your verdict."

At approximately 4:30 p.m. that day, the court received another note from the jury, stating: "We have immovable jurors on the charge of second-degree assault." In response,

the court gave an *Allen*-type instruction to the jury.[6] Approximately a half hour later, the jury found appellant guilty of reckless endangerment, unauthorized removal of property, driving with a revoked license, and driving with a suspended license.[7]

II.

Sentencing

On July 28, 2022, the court held a sentencing hearing. Mr. Edidi appeared in person and presented a victim impact statement to the court. He explained the injuries that he sustained, including that he had continued blurry vision in his right eye, and he could not walk regularly. Because of those injuries, he had to retire. Mr. Edidi stated that appellant was a threat to society and should be given the maximum penalty provided under Maryland law.

The prosecutor then presented several receipts that Mr. Edidi had given to her, which reflected the following expenses:

- **$500** (property insurance deductible to "Autobody Alusia of Parkville").
- **$265** (towing charge to Baltimore City Towing).
- **$1,049** (medical bill for "damage to [Mr. Edidi's] teeth" to Mitcherling and Mitcherling Dentists).
- **$437.50** (medical bill for eye exam).
- **$237** (medical insurance payment to Allstate).

[6] *Allen v. United States*, 164 U.S. 492 (1896).

[7] The jury found appellant not guilty of first-degree assault, second-degree assault, and malicious destruction of property.

- **$438** (first medical bill to Johns Hopkins).
- **$770** (medical bill for ambulance).
- **$443** (second medical bill to Johns Hopkins).

The expenses totaled $4,139.50, and the prosecutor stated that "all [of] this occurred as a result of the incident." The State requested, among other things, that the court award restitution of $4,139.50 to Mr. Edidi.

Defense counsel objected to the request for restitution. He noted that the jury acquitted appellant of first-degree and second-degree assault, and he asserted that "the jury could not have made that finding without the jury coming to the conclusion that self-defense was applicable." Although the jury convicted appellant of reckless endangerment, it did so only after the court, in response to the jury's note, indicated that the jury could consider "the conduct on the street" in considering the charge of reckless endangerment. Counsel stated that "[t]he inescapable conclusion is that this incident . . . on the roadway was . . . what the jury based its finding of guilt of reckless endangerment."[8] Counsel argued that it would be "factually inconsistent" for the jury to acquit on first-degree assault and

[8] It does not appear that appellant's driving could serve as the basis of his conviction for reckless endangerment. Maryland's reckless endangerment statute, Md. Code Ann., Crim. Law Art. ("CL") § 3-204 (2021 Repl. Vol.), provides that "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another." CL § 3-204(a)(1). It further provides that "[s]ubsection (a)(1) of this section does not apply to conduct involving . . . the use of a motor vehicle, as defined in § 11-135 of the Transportation Article." CL § 3-204(c)(1)(i). The jury, however, was told that the traffic incident could be the basis of a reckless endangerment conviction, so we must consider that in determining if the conduct underlying the conviction permitted restitution.

second-degree assault, but convict on reckless endangerment, "unless they were looking at the conduct that occurred on the street." Counsel continued, as follows:

> So, your honor, certainly I know the [c]ourt will not punish [appellant] for acquitted conduct, but I think it's important to note that everything points towards the incident on the street leading to the conviction of reckless endangerment.
>
> In that regard, I think the [c]ourt should only consider the deductible as to the property damage and the towing bill, I think that would be only the fair and appropriate amounts of restitution to consider in this case.

Counsel requested that any restitution order be limited "to convictions related directly to the motor vehicle, given that [appellant] was acquitted of the assaultive" conduct, stating: "I don't think it would be proper to award restitution as it pertains to medical bills."

As indicated, the court ordered, among other things, that appellant make restitution of $4,139.50 to Mr. Edidi through the Division of Parole and Probation by May July 28, 2026. This appeal followed.

STANDARD OF REVIEW

In Maryland, a court's authority to enter an order of restitution against a criminal defendant is pursuant to statute. Md. Code Ann., Crim. Proc. Art. ("CP") §§ 11-603 (authorizing restitution order as part of a sentence), 6-221 (authorizing restitution order as a condition of probation) (2018 Repl. Vol.). *See Silver v. State*, 420 Md. 415, 427 nn.15–16 (2011) (noting that restitution in criminal cases is permitted "by statute," pursuant to either CP § 11-603, as part of a sentence, or CP § 6-221, as a condition of probation), *cert. denied*, 565 U.S. 1128 (2012). *See* CP § 11-601(g) (defining "judgment of restitution" as either "a direct order for payment of restitution," CP § 11-603, or "an order for payment of

restitution that is a condition of probation in an order of probation," CP § 6-221). *Accord Pete v. State*, 384 Md. 47, 60–61 (2004) (vacating portion of trial court's restitution order that did not comply with CP § 11-603 or CP § 6-221). *See also United States v. Davis*, 714 F.3d 809, 812 (4th Cir. 2013) ("'[F]ederal courts do not have the inherent authority to order restitution, but must rely on a statutory source' to do so.") (quoting *United States v. Cohen*, 459 F.3d 490, 498 (4th Cir.2006)).

To the extent that the court acts within the scope of its statutory authority in ordering the payment of restitution, we typically review the restitution order for abuse of discretion. *McCrimmon v. State*, 225 Md. App. 301, 306 (2015). *Accord United States v. Batson*, 608 F.3d 630, 632–33 (9th Cir. 2010) ("Provided that an order of restitution is within the bounds of the statutory framework," an appellate court will "review the order for an abuse of discretion."); *United States v. Cienfuegos*, 462 F.3d 1160, 1162 (9th Cir. 2006) (An appellate court will "review a restitution order for an abuse of discretion, provided that it is within the bounds of the statutory framework."). If, however, an order of restitution is illegal, such as when the restitution order is beyond the scope of the court's statutory authority, "we review it as a matter of law." *McCrimmon*, 225 Md. App. at 306. *Accord United States v. Casados*, 26 F.4th 845, 848 (10th Cir. 2022) ("A restitution order that exceeds its statutory authorization is illegal."); *United States v. Webber*, 536 F.3d 584, 601 (7th Cir. 2008) ("An order of restitution that is imposed without a statutory basis is 'illegal.'") (quoting *United States v. Pawlinski*, 374 F.3d 536, 540 (7th Cir. 2004)).

DISCUSSION

Appellant contends that the circuit court erred in ordering him to pay restitution in the amount of $4,139.50. He asserts that the medical expenses associated with Mr. Edidi's personal injuries, totaling $3,374.50, were improper because they were not the "direct result" of his conviction for reckless endangerment.[9] He argues that, under the facts here, where the State argued and the court's instructions "permitted the jury to convict [appellant] of reckless endangerment based on conduct independent of the physical encounter which led to Mr. Edidi's personal injuries," it is "at least ambiguous whether the jury found that Mr. Reeder was guilty of reckless endangerment due to his initial driving, or due to his actions in the parking lot." Under these circumstances, appellant argues, the court could not find that Mr. Edidi's personal injuries were the "direct result" of that conviction, and the court had no authority to order restitution for expenses associated with Mr. Edidi's personal injuries.

The State contends that the expenses associated with Mr. Edidi's personal injuries were a direct result of appellant's conviction for reckless endangerment, and the circuit court's restitution order was proper. It argues that appellant "cannot definitively say that his conviction for reckless endangerment did not relate [to] his beating of [Mr.] Edidi, particularly because the theory of the State's case was that it did." It argues that, in its

[9] Appellant concedes that the $500 property insurance deductible and the $265 towing bill, totaling $765, were "properly awardable as restitution." His contention that the circuit court erred in ordering him to pay restitution for expenses that were not the "direct result" of his convictions is limited to the portion of the award which exceeds that amount, i.e., the $3,374.50 in expenses associated with Mr. Edidi's personal injuries.

response to the jury's note, the court "instructed the jury to consider all of the evidence, which included the fight," and "the evidence supports a reasonable inference that [appellant's] actions that resulted in his conviction for reckless endangerment were directly related to [Mr.] Edidi's injuries."

"The statutory framework providing a court's authority to order restitution is Subtitle 6, Title 11 of the Criminal Procedure Article." *In re G.R.*, 463 Md. 207, 213 (2019). "Restitution, as applied in a criminal case under Maryland's Criminal Procedure Article, is a criminal sanction, not a civil remedy." *McCrimmon*, 225 Md. App. at 307. "Although restitution serves to recompense the victim, it aims also to punish and rehabilitate the criminal." *State v. Stachowski*, 440 Md. 504, 512 (2014).

CP § 11-603 sets forth the grounds for restitution and provides, in part, as follows:

> (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; [or]
>
> (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;
> > (ii) direct out-of-pocket loss;
> > (iii) loss of earnings; or
> > (iv) expenses incurred with rehabilitation . . . .

CP § 11-603(a)(1)–(2) (emphasis added).[10] A "victim" includes "a person who suffers death, personal injury, or property damage or loss as a direct result of a crime or delinquent act." CP § 11-601(j)(1).

The Supreme Court of Maryland has construed CP § 11-603 as creating explicit requirements that, if met, authorize a court to order the payment of restitution under limited circumstances.[11] *Pete*, 384 Md. at 66. One such requirement is that the injuries or losses for which restitution is ordered must be a "direct result" of the crime. *Id.* at 61. The Supreme Court discussed the direct result requirement of CP § 11-603 in *Stachowski*, 440 Md. at 513, as follows:

> Determining whether an injury is a "direct result" of the criminal conduct is central traditionally to mapping the outer limits of a trial court's discretion in ordering restitution in most cases. Our cases are clear that restitution may be compelled only where the injury results from the actions that made the defendant's conduct criminal. *See Goff v. State*, 387 Md. 327, 344 (2005) (finding that the defendant's conduct was a direct result of the injury for which restitution was ordered because the property damage was caused "during and because of" the crime, without any intervening cause); *Pete*, 384 Md. at 60–61 (rejecting proximate causation, mere nexus, or single charging

[10] "Generally, courts may impose restitution as either a condition of probation or as part of a sentence." *Lafontant v. State*, 197 Md. App. 217, 226, *cert. denied*, 419 Md. 647 (2011). *Accord Songer v. State*, 327 Md. 42, 46 (1992) ("A sentencing court may order restitution in one of two ways—either directly as part of the sentence or as a condition of probation."). *Compare* CP § 11-603(a) (authorizing restitution as a direct sentence), *with* CP § 6-221 (authorizing restitution as a condition of probation). "Although, technically, separate statutes govern sentencing and probation, restitution orders at either stage must meet the 'direct result' requirement of CP [§] 11-603." *Silver v. State*, 420 Md. 415, 427 n.16 (2011), *cert. denied*, 565 U.S. 1128 (2012).

[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

> document theories of defining the direct result of the crime and, instead, requiring "a direct result between the qualifying crime committed and the damages inflicted" in order for restitution to [be] authorized). Further, as we announced in *Walczak v. State*, restitution may be compelled ordinarily only for the criminal conduct for which the defendant was convicted. 302 Md. 422, 429 (1985).[12]

"A 'direct result' of a crime occurs 'where there is no intervening agent or occurrence separating the criminal act and the victim's loss.'" *Uzoukwu v. State*, 252 Md. App. 271, 279 (2021) (quoting *In re Cody H.*, 452 Md. 169, 195 (2017)). *Accord In re G.R.*, 463 Md. at 216 n.6 ("[R]estitution may not be awarded where there is an intervening agency, occurrence, or event which severs direct causality.").

Here, although the indictment charging reckless endangerment was based on "punching" that created a substantial risk of death or serious physical injury, the prosecutor stated during closing argument that the jury could find appellant guilty of reckless endangerment based on "[t]he fact that the defendant was driving in that manner, got in a fight in the parking lot, [and] drove the vehicle into a fence." The jury then asked whether the charge of reckless endangerment included "the road incident," and the court responded that it could consider "all of the evidence" that the jury believed was warranted in reaching its verdict. As defense counsel noted at trial, the court's response indicated to the jury that it could convict appellant of reckless endangerment based on the traffic incident. Thus, as

[12] *Lee v. State*, 307 Md. 74, 81 (1986), provides a narrow exception, not relevant here, when a defendant expressly agrees to pay restitution as part of a plea bargain. *Accord Silver*, 420 Md. at 432 ("[T]he State may request, in plea negotiations, that a criminal defendant agree to pay restitution for related, though uncharged, crimes. If the defendant freely and voluntarily agrees to pay such restitution, it is permissible under *Lee*.").

appellant notes on appeal, "it is at least ambiguous whether the jury found that [he] was guilty of reckless endangerment due to his initial driving, or due to his actions in the parking lot."[13]

Appellant argues that, to the extent the basis for the reckless endangerment conviction is ambiguous, the court "had no authority to award restitution for Mr. Edidi's personal injuries." We agree.

As the Supreme Court has made clear, "restitution may be compelled only where the injury results from the actions that made the defendant's conduct criminal." *Stachowski*, 440 Md. at 513. Accordingly, if the reckless endangerment conviction was based on the "punching" in the parking lot, it was appropriate to order restitution for medical expenses associated with Mr. Edidi's personal injuries, but if the conviction was based on the initial traffic incident on Wabash Avenue, then restitution for the medical expenses was not permitted because such losses were not the direct result of the crime under CP § 11-603.

Because it is impossible to know, under the unique circumstances of this case, which instance of criminal conduct was the basis for the reckless endangerment conviction (i.e., the traffic incident on Wabash Avenue or the "punching" in the parking lot), we cannot conclude that the medical expenses associated with Mr. Edidi's personal injuries were the

[13] Appellant further argues that, given the acquittal of the assault charges, the jury's note, and the court's response to the jury, "the only explanation for the jury's verdict . . . is that it found guilt based on [his] driving, and not based on the conduct in the parking lot." Although we disagree with that argument, we agree that the basis for the reckless endangerment conviction is ambiguous.

"direct result" of the conviction. Rather, we must afford appellant "the benefit of the rule of lenity." *Dutton v. State*, 160 Md. App. 180, 187 (2004) ("[I]f doubt exists as to the proper penalty, punishment must be construed to favor a milder penalty.") (quoting *Wilson v. Simms*, 157 Md. App. 82, 98 (2004)), *cert. denied*, 385 Md. 512 (2005).

Here, it was appropriate to order restitution for the $765 in expenses associated with the damage to Mr. Edidi's car. The court erred, however, in ordering restitution for the $3,374.50 in medical expenses associated with Mr. Edidi's personal injuries.[14]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REGARDING RESTITUTION REVERSED, IN PART; CASE REMANDED WITH INSTRUCTIONS TO VACATE THE AWARD OF RESTITUTION OF $3,374.50 TO OLUSEGUN EDIDI. JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.

[14] We note that our conclusion on the issue presented to us should not be construed to preclude Mr. Edidi from filing a separate civil suit for damages.