

Circuit Court for Montgomery County
Case No. 6-J-18-50487

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2927

September Term, 2018

IN RE: D.W.

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

JJ.

PER CURIAM

Filed: November 6, 2019

*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.

D.W., appellant, entered a plea of involved in the delinquent act of second-degree assault. The Circuit Court for Montgomery County, sitting as the juvenile court, found a sufficient factual basis for the plea and entered a finding of involved. At disposition, D.W. was ordered to be jointly and severally liable, along with two co-defendants, for restitution to the victim in the amount of \$1,220.43. D.W. appeals, presenting two questions for our review:

1. Did the State provide sufficient evidence that [the victim's] entire medical bill of \$1220.43 was a direct result of appellant's second degree assault where [the victim] was assaulted and pepper-sprayed by two other individuals and the assaults were separate and distinct and caused separate and distinct injuries?

2. Did the court err in imposing restitution without considering appellant's ability to pay where the court knew, and was reminded by defense counsel, that appellant and his family were homeless at the time of the offense?

For the following reasons, we shall vacate the restitution order in part, and otherwise affirm the judgment of the juvenile court.

BACKGROUND

At the plea hearing, the State proffered evidence that, on March 7, 2018, a Metro bus driver permitted D.W. and two friends to board a bus, without paying, because they had no money. D.W. and his friends then began “engaging in inappropriate behavior and acting disorderly on the bus.” The bus driver asked the three individuals to exit the bus, but they refused. When the inappropriate behavior continued, the bus driver stopped the bus and again asked them to leave. One of D.W.'s companions began arguing with the bus driver and spit in his face, then sprayed him with mace. As the bus driver was exiting the

bus “to deal with the [co-defendant],” D.W. came from behind and hit the bus driver in the head, knocking him down onto the sidewalk. At that point, a passenger on the bus intervened, and D.W. and his two friends walked away.

After finding D.W. involved in the delinquent act of second-degree assault, the juvenile court heard from the Department of Juvenile Services. The Department proffered that D.W. was 18 years old and was attending high school. D.W. and his father had been “in a homeless situation” that summer and had been staying at a hotel and in a shelter, but, at the time of the plea hearing on September 18, 2018, they had “stable living” arrangements. D.W. was “very interested in working” and planned to apply for a job at his father’s place of employment. There were no concerns about substance abuse or mental health issues. The Department recommended, as temporary disposition, that D.W. be required to attend a Victim’s Awareness Education Program, write an apology letter to the victim, complete 20 hours of community service, and seek and maintain part-time employment.

The bus driver, Monte Medley, then addressed the court. He explained that after he stopped the bus and radioed the dispatcher for assistance, D.W. hit him in the back of his head. Mr. Medley stated, “he hit me . . . in the back of my head, kind of knocking me over on the edge of the bus, and it cut my hand and put like five stitches in my hand.” Mr. Medley asked the court to take into consideration the “expenditures” and “inconveniences” related to the incident, stating “this incident [] caused me eight days off of work, five stitches in my hand, which I have a scar on my hand now to this day. All kind[s] of medical expenditures you know, as far as going . . . to the hospital and all this stuff.” The juvenile

court ordered the temporary disposition recommended by the Department and scheduled final disposition for October 24, 2018.

At the hearing on October 24th, D.W.’s probation officer informed the court that D.W. had completed all the requirements ordered by the court at temporary disposition, except for the part-time employment, which D.W. was “working on[.]” The probation officer stated that D.W.’s housing situation had “been stabilized” and that things were “going well.” The prosecutor requested that final disposition be postponed because no documentation had yet been submitted verifying that D.W. had completed the Victim Awareness Education Program and community service hours ordered by the court. The prosecutor also informed the court that the victim was seeking restitution but had not yet submitted his medical bills. The court expressed that, in light of the “economic circumstances” of D.W. and his family, restitution might not be “realistic,” but rescheduled final disposition to November 19, 2018, to give Mr. Medley “an opportunity to make that request[.]”

On November 7, 2018, the State filed a petition in support of its request for a judgment of restitution, along with redacted copies of two medical bills that were sent to Mr. Medley. The first bill, in the amount of \$209.00, indicates that the bill was for a “CT Scan, Head/Brain” that was done on March 7, 2018, the date of the assault. The second bill, in the amount of \$1,011.43, which is dated April 11, 2018, does not indicate the date or nature of the service(s) provided.

At the final disposition hearing on November 19, 2018, defense counsel objected to the prosecutor’s request for restitution for total amount of the medical bills, stating that the

hospital bill was not itemized and did not indicate what the treatment was for. Defense counsel stated that “there was a lot going on, and the female in this group was somebody they were wrestling around with and she maced him[,]” and argued that “[w]e really can’t determine what injuries [were] from what person in the altercation.”

Defense counsel reminded the court that D.W.’s family had been homeless, and the court responded that it was “inclined just to enter a judgment in the amount of restitution as opposed to making it a condition of probation.” The court then ordered D.W. to pay restitution for Mr. Medley in the amount of \$1,220.43, to be joint and several with the two other co-defendants.

DISCUSSION

The decision to require restitution, as well as the amount, are reviewed on appeal for abuse of discretion. *In re: A.B.*, 230 Md. App. 528, 531 (2016). The legal conclusions underlying a juvenile court restitution order are reviewed *de novo*. *Id.*

Maryland Code (2001, 2008 Repl. Vol.), Criminal Procedure Article (Crim. Pro.), § 11-603, which governs restitution, provides, in pertinent part, that “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: . . . as a direct result of the crime or delinquent act, the victim suffered . . . actual medical . . . expenses or losses.” A victim is presumed to have a right of restitution if the victim or the State requests restitution and the court is presented with competent evidence of the medical expense or loss. Crim. Pro. § 11-603(b).

“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)). Even though the rules of evidence are not strictly applied in a juvenile restitution proceeding, “there still exists an inherent reliability/credibility requirement which a proponent of the offered evidence must satisfy.” *Id.* (quoting *In re: Delric H.*, 150 Md. App. 234, 249 (2003)).

D.W. contends that the court erred in finding that Mr. Medley incurred \$1,220.43 in medical bills as a direct result of D.W.’s assault because the bills were not itemized and therefore “did not separate the costs associated with medical care for the victim’s injuries relating to the assault committed [by D.W.] as opposed to the assaults committed by the others charged as a result of the events on the bus.” He asserts that, in the absence of evidence from Mr. Medley to explain the medical bills “or how any specific treatment he received related to any of his specific injuries caused by multiple assaults,” the court erred in finding the bills to be a direct result of D.W.’s actions.

We find no support in the record for the assertion that Mr. Medley sustained injuries as a result of anyone’s conduct but that of D.W. According to the State’s proffer, one of D.W.’s companions spit on Mr. Medley and sprayed him with mace, but there is nothing in the record to indicate that those actions caused an injury or necessitated medical treatment. When Mr. Medley addressed the court, he informed the court that D.W. hit him in the head, causing him to fall. In the process he his cut his hand, which required stitches. Mr. Medley mentioned that D.W.’s companion spit on him, but he did not mention any

other assault or injury. In light of that evidence, we conclude that the bill for \$209.00 for a CT scan of the head on the day of the assault is competent evidence of a medical expense incurred as a direct result of the assault by D.W.

We further conclude that the other bill, in the amount of \$1,011.43, was not competent evidence supporting the request for restitution. Mr. Medley was not present at the final disposition hearing in November to testify that the bill was a medical expense that was directly related to the assault. Although the petition in support of the request for reimbursement stated that the two bills were “incurred during the commission of the delinquent act[.],” the affidavit that accompanied the petition, affirming that the contents of the petition were true and correct, was not signed by Mr. Medley or by anyone else. The bill itself does not indicate the date of the treatment or what treatment was provided. Consequently, we conclude that the State did not satisfy its burden of establishing, by a preponderance of the evidence, that the bill for \$1011.43 was a medical expense incurred by Mr. Medley as a direct result of the assault.

D.W. next asserts that the juvenile court erred in imposing restitution without considering his ability to pay. The State responds that the claim was not preserved for review because D.W. never asked the court to inquire into his ability to pay, nor did he object to the restitution order on grounds that the court had not made the requisite inquiry. We agree with the State. As we have previously stated, “[w]hen a court orders a defendant to make restitution to a crime victim, and the defendant believes that the court either fails to inquire into his ability to pay or errs in determining his ability to pay, the defendant must

make a timely objection to the order, else the issue is waived.” *McDaniel v. State*, 205 Md. App. at 566 (citing *Brecker v. State*, 304 Md. 36, 41-42 (1985)).

**ORDER OF RESTITUTION VACATED.
CASE REMANDED TO THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
WITH DIRECTIONS TO ENTER A NEW
RESTITUTION ORDER IN THE AMOUNT
OF \$209.00. COSTS TO BE PAID BY
MONTGOMERY COUNTY.**