

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1477

September Term, 2014

IN RE: QUINCY H.

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 14, 2015

*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.

The Circuit Court for Baltimore City, sitting as a juvenile court, found Quincy H., appellant, involved in the delinquent acts of unauthorized use of a vehicle, motor vehicle theft, and operating a motor vehicle without a license. Following a disposition hearing, appellant was placed on indefinite probation and ordered to pay \$500 in restitution. On appeal, appellant challenges the restitution award, arguing that it should be vacated because his delinquent acts did not directly cause the victim's loss. We agree.

FACTS

On the afternoon of February 12, 2014, Daynel Gordon drove his wife and infant son in their 2013 Jeep to the YMCA in Baltimore City for a swimming lesson. Gordon left his belongings in a changing room, and when he dressed after the lesson, he noticed that his keys in his coat pocket were missing. He looked out the window and noticed that his Jeep was no longer in the parking lot. A man at the center told Gordon that he had seen “two guys” throwing some keys down the drain and then get into a car and leave.

Two days later, while Gordon's brother was driving Gordon around town, they saw Gordon's Jeep. Gordon called the police and Gordon's brother followed the Jeep for about a half hour. During that time, the brothers saw those inside stop the Jeep and “switch drivers” – the brothers watched as a man, who they both later identified as appellant, entered the driver's seat. Sometime later, appellant stopped the Jeep and again switched drivers so that appellant was no longer driving. Eventually, the police stopped the Jeep, at which time the occupants, including appellant, attempted to flee the Jeep.

When Gordon inspected his Jeep, he noticed that the Jeep had sustained damage to the rear side and taillight area. The cost to repair the damage was \$2,612. Gordon's insurance covered the cost of repair less a \$1,000 deductible, which Gordon paid out of pocket.

Appellant testified in his defense that on the afternoon of February 14, three acquaintances picked him up in a car. While in the car, one of the occupants told him, "We just took this yesterday." Appellant understood this to mean that the car was stolen. Appellant denied driving the car at any time. He testified that one of the occupants had the same hair cut and complexion as him.

The juvenile master found the State's witnesses credible and recommended that appellant be found involved in motor vehicle theft, unauthorized use of a vehicle, and driving without a license. The master found appellant not involved in any of the charges arising out of the taking of the vehicle. Additionally, the master recommended that appellant pay \$500 in restitution for the damage to the Jeep. Appellant filed exceptions to the master's findings and challenged the restitution order on grounds that there was no causal connection between his actions and the restitution award. The circuit court overruled appellant exceptions to the restitution award.

DISCUSSION

Appellant argues that the juvenile court erred in ordering him to pay restitution. Citing *In re Levon A.*, 361 Md. 626 (2000) and *In re Jason W.*, 94 Md. App. 731 (1993), he

argues that there was no evidence that he directly caused the damage to the Jeep. The State agrees, as do we.

Md. Code Ann., Crim. Proc. Art., § 11-603(a), provides, in pertinent part, that a court may enter a judgment of restitution if: “(1) as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, [or] destroyed . . . [or] (2) as a direct result of the crime or delinquent act, the victim suffered . . . direct out-of-pocket loss[.]” The Court has “stressed that only property damaged or destroyed during the commission of the delinquent act c[an] be considered[.]” *In re Jason W.*, 94 Md. App. at 736 (citation and quotation marks omitted). Moreover, “[t]he statute does not allow restitution simply because property damage results from a delinquent act. It requires that the child have caused that damage.” *Id.* at 737.

Although the lower court has discretion to enter a restitution award, that discretion is limited by the statutory scheme. Thus, when the lower court acts within the confines of the statute, we review for an abuse of discretion, but when the lower court exceeds the statutory ability to impose restitution, we review the issue of law de novo. *See State v. Stachowski*, 440 Md. 504, 512-13 (2014) and *Silver v. State*, 420 Md. 415, 427-28 (2011), *cert. denied*, 132 S.Ct. 1039 (2012).

In both *In re Levon A.*, *supra*, and *In re Jason W.*, *supra*, the Maryland appellate courts further elaborated on the nexus required to order a restitution award. *In re Levon A.*, concerned a juvenile stealing a car. While driving the car, he saw his friend, Levon A.,

walking home from school and offered him a ride. A police officer saw the car and noticed that it contained two boys who were too short to see over the dashboard and steering wheel. The police gave chase, which ended when the car ran into some shrubbery and a fence. At the ensuing adjudicatory hearing, Levon admitted that during the ride his friend had told him that the car was stolen. The master found Levon involved in the delinquent act of unauthorized use and recommended that he pay restitution for the damage done to the car and for the value of the items taken from the car. *In re Levon A.*, 361 Md. at 629-31. The Court of Appeals reversed the restitution order, holding that, as a passive passenger, Levon was not directly responsible for the damage to the vehicle caused by the collision. *Id.* at 640-41.

Regarding *In re Jason W.*, Jason W. was observed by the police driving a motorcycle on a public highway without registration tags. When the police gave chase, he attempted to elude the officers. The chase ended when Jason's motorcycle stalled. Meanwhile, one of the officers giving chase drove into a tree, causing extensive damage to his police cruiser and himself. Appellant pled guilty to operating a motor bike without registration. At the adjudicatory hearing, the juvenile court found that ““but for the actions of Jason this accident would not have occurred. It is the proximate cause of the accident that did occur.”” *In re Jason W.*, 94 Md. App. at 735. On that basis, the court entered a restitution judgment for the amount of damage to the police cruiser. We reversed the restitution judgment. We held that Jason was not liable for the damage to the police car, reasoning that ““Jason's conduct did not damage the sheriff's car; Deputy Guy's conduct did.”” *Id.* at 737. Additionally, because the

State placed the “eluding an officer” charge on the “stet” docket and proceeded only on the operating of an unregistered vehicle charge, the State destroyed the required nexus between the delinquent act and the damage. *Id.*

Turning to our facts, we are persuaded that the restitution award must be vacated because there was no evidence that appellant’s presence in the Jeep or his driving the Jeep in any way caused damage to the vehicle. Appellant testified that he was not involved in the initial act of stealing the Jeep. Moreover, the juvenile court specifically found appellant involved in the delinquent acts based on his driving the Jeep two days after the theft, not that he was involved in the initial theft. In addition, there was no evidence that the damage caused to the Jeep occurred while appellant was in it. Accordingly, we shall vacate the restitution order.

**RESTITUTION ORDER VACATED;
JUDGMENT OTHERWISE AFFIRMED.**

**COSTS TO BE PAID BY MAYOR AND
CITY COUNCIL OF BALTIMORE CITY.**