

Circuit Court for Baltimore County
Case Nos. 03-K-18-003172, 03-K-17-004721

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1239 and 1242

September Term, 2019

NYSHIEM INMON

v.

JOVAN J. ROBERTS

NYSHIEM INMON

v.

GREGORY DONNELL YOUNG

Leahy,
Friedman,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: May 8, 2020

*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.

On April 29, 2019, in the Circuit Court for Baltimore County, codefendants Jovan Roberts and Gregory Young each entered *Alford* pleas¹ to a single count of robbing appellant Nyshiem Inmon. At this hearing, Mr. Inmon, through counsel, requested: 1) \$986.39 in restitution for his stolen cell phone; 2) \$1,559.00 in dental expenses related to an injury he sustained during the robbery; and 3) \$6,532.65 in rental expenses as a result of him fleeing Maryland and abandoning his apartment following the robbery. After sentencing Young and Roberts to a term of imprisonment, the court awarded Mr. Inmon only \$986.39 in restitution for his stolen cell phone. Mr. Inmon timely appealed and presents a single question for our review, which we rephrase as follows:

Did the sentencing court err in refusing to order restitution for Mr. Inmon's dental and rental expenses?

We conclude that Mr. Inmon failed to present competent evidence that his dental and rental expenses were a direct result of the robbery, and therefore affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

According to the agreed-upon facts proffered by the State, some time prior to July 16, 2017, Mr. Inmon boasted on social media that he had won \$6,000 in Atlantic City. On July 16, Mr. Inmon was playing video games at his apartment with two acquaintances, later identified as Roberts and Young. At some point during this encounter, Young displayed a

¹ An *Alford* plea “lies somewhere between a plea of guilty and a plea of *nolo contendere*.” *Bishop v. State*, 417 Md. 1, 19 (2010) (quoting *Rudman v. Md. State Bd. of Physicians*, 414 Md. 243, 260 (2010)). It is “a guilty plea containing a protestation of innocence.” *Id.* (quoting *Marshall v. State*, 346 Md. 186, 189 n.2 (1997)).

handgun, and then he and Roberts demanded that Mr. Inmon “kick the bread out.” A scuffle ensued, during which Young struck Mr. Inmon with the gun. Mr. Inmon managed to empty his pockets and then locked himself in the bathroom. Roberts and Young stole Mr. Inmon’s cell phone and then left the premises.

The State charged Roberts and Young with numerous crimes, including robbery with a dangerous weapon, robbery, and assault. On April 29, 2019, both defendants entered *Alford* pleas to a single count of robbery and agreed to pay restitution for Mr. Inmon’s cell phone as part of their agreement. Mr. Inmon’s counsel, however, sought additional restitution.² First, counsel claimed that Mr. Inmon suffered a chipped tooth during the robbery which required dental work totaling \$1,559.00. Second, Mr. Inmon’s counsel claimed that Mr. Inmon, fearing for his safety after the robbery, fled Maryland, and that his landlord was suing him for \$6,532.65—the unpaid balance of his apartment lease.

Although Roberts and Young conceded the appropriateness of restitution for Mr. Inmon’s cell phone, they disputed Mr. Inmon’s restitution claims for the dental and rental expenses. In support of Mr. Inmon’s claim, the prosecutor noted that Mr. Inmon’s victim impact statement indicated that he lost a tooth as a result of the robbery, which required a root canal procedure from Columbia Family Dentist. We note, however, that the parties agree that Mr. Inmon’s victim impact statement was never offered below and thus is not

² Mr. Inmon was not present at the plea and sentencing hearing when restitution was considered.

part of the record. The State then deferred to Mr. Inmon's counsel for further argument regarding restitution.

During argument, Mr. Inmon's counsel provided the court with a copy of a Motion for Restitution signed only by counsel. Attached to this motion were several documents, including a dental bill from Columbia Family Dentist and a print-out from the Maryland Case Search website showing that a party named Painters Mill Realty, LLC had filed a contract claim on July 16, 2018, for \$6,532.65 against Mr. Inmon.

Ultimately, the sentencing court only ordered \$986.39 in restitution for Mr. Inmon's cell phone, denying his claims for dental and rental expenses. Mr. Inmon timely noted this appeal. We shall provide additional facts as necessary.

DISCUSSION

“Generally, an appellate court reviews a circuit court's order of restitution for abuse of discretion.” *In re G.R.*, 463 Md. 207, 213 (2019) (citing *In re Cody H.*, 452 Md. 169, 181 (2017)). “However, where a circuit court's order involves ‘an interpretation and application of Maryland statutory and case law[,]’ we review its decision de novo.” *Id.* (alteration in original) (quoting *Goff v. State*, 387 Md. 327, 337-38 (2005)).

As we shall explain, the restitution statute requires a victim to present the court with competent evidence that the requested expenses were a direct result of the crime. Because Mr. Inmon failed to present such competent evidence, we affirm the sentencing court's denial of his request for restitution.

Md. Code (2001, 2018 Repl. Vol.), § 11-603 of the Criminal Procedure Article (“CP”) provides the framework for an order of restitution. That section provides, in relevant 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;

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

...

(b) A victim is presumed to have a right to restitution under subsection (a) of this section if:

(1) the victim or the State requests restitution; and

(2) *the court is presented with competent evidence* of any item listed in subsection (a) of this section.

(Emphasis added). Notably, under CP § 11-603(b)(2), Mr. Inmon was required to present competent evidence that his dental and rental expenses were a direct result of the robbery.

Maryland caselaw has consistently held that the party seeking restitution must present competent evidence in support of that claim. In *Chaney v. State*, 397 Md. 460, 473 (2007), the Court of Appeals vacated a restitution order for lack of competent evidence. There, Chaney struck the victim with a baseball bat, and was convicted of assault. *Id.* at

464. At sentencing, “[a]lthough [the victim] was in court and orally presented a victim impact statement, there was no request for, and no discussion of, restitution.” *Id.* Nevertheless, in issuing Chaney’s sentence, the court ordered him to pay the victim \$5,000 in restitution. *Id.* at 464-65. Chaney appealed the restitution order, and prior to any action by this Court, the Court of Appeals granted *certiorari*. *Id.* at 464-65.

The Court of Appeals began its restitution analysis by resolving an apparent discrepancy between CP § 11-603(a) and (b) in the restitution statute. *Id.* at 469. The Court explained,

There appears to be some facial ambiguity in these two subsections. Subsection (a) purports to permit the court to order restitution for the enumerated expenses, even in the absence of (1) a request for restitution by the State or the victim, and (2) any evidence to support an award. The specific requirement of a request and supporting evidence is found in subsection (b) in the context of a presumption of entitlement. Arguably, the statute might be read as allowing a court, under subsection (a), to order restitution without any request for it and without any evidence to support it so long as it is not applying the presumption stated in subsection (b). In that regard, the statute is, at best, inartfully drawn. We are unwilling to read subsection (a) in such an unrestrained manner, because to do so would not only raise serious due process issues but also contravene the rule of lenity that is ordinarily applied when a penal statute is ambiguous.

Id. at 469-70. The Court therefore declined to construe CP § 11-603(a) as creating a distinct statutory right to restitution which could apply even in the absence of a request for restitution under CP § 11-603(b)(1). *Id.* Rather, the Court noted that, as a matter of Constitutional due process, restitution may only be ordered where “there is sufficient admissible evidence to support the request—*evidence of the amount of a loss or expense incurred for which restitution is allowed and evidence that such loss or expense was a*

direct result of the defendant's criminal behavior."³ *Id.* at 470 (emphasis added). Regarding the burden placed on restitution victims, the Court stated, "[t]his is not an onerous burden; indeed, it should be a relatively simple one." *Id.* at 471. In vacating the award, the court concluded that there was "no evidentiary basis" to support the \$5,000 restitution order. *Id.* at 473.

Our Court has similarly stressed the importance of an evidentiary basis for restitution orders. In *Juliano v. State*, this Court vacated a restitution order for lack of competent evidence. 166 Md. App. 531, 543-44 (2006). There, Juliano participated in a scheme to "purchase . . . automotive parts with stolen credit card information." *Id.* at 535. A jury convicted Juliano of theft of property greater than \$500, and as a condition of probation, the sentencing court ordered him to pay \$6,881.42 in restitution to the automotive company. *Id.* at 536. On appeal, Juliano challenged the restitution order on several grounds, including that the Maryland restitution statute was unconstitutional, and that the amount ordered was not supported by competent evidence.⁴ *Id.*

³ The Court also noted that due process required: 1) giving the defendant reasonable notice that restitution was being sought, and the amount being requested, and 2) that the defendant be "given a fair opportunity to defend against the request[.]" *Chaney*, 397 Md. at 470.

⁴ Juliano also challenged the restitution order on the ground that the court erred by failing to make explicit findings of fact. *Juliano*, 166 Md. App. at 536. Because we ultimately vacated and remanded the order, we simply noted for guidance on remand that "in every case the record should clearly reflect the basis for the amount of restitution ordered." *Id.* at 544.

Regarding his constitutional challenge, Juliano claimed that the statute's "presumption" favoring restitution violated due process by not requiring the State to prove the facts supporting the award by a preponderance of the evidence.⁵ *Id.* at 539. In rejecting this argument, we stated:

By no stretch can it successfully be argued that [the restitution statute] eliminates the basic requirement that the State prove the victim's entitlement to a restitution award. Certainly, the State must introduce "competent evidence" to carry its burdens of production and persuasion that the victim is entitled to restitution, and, if so, the amount of it. "Competent evidence" is simply evidence that is reliable and admissible.

Id. at 540 (citing *In re Billy W.*, 387 Md. 405, 433 (2005)). Consistent with "[t]he federal courts and a number of our sister states," we held that a victim's entitlement to restitution, including the amount of restitution, must be established by a preponderance of the evidence. *Id.* at 540-41.

After rejecting Juliano's constitutional challenge, we turned to whether there was competent evidence to support the court's restitution order. *Id.* at 543. We agreed with Juliano that "there [was] a disputed factual basis for the circuit court's restitution order." *Id.* Whereas at trial, bills and credit card receipts admitted into evidence totaled \$7,001.24 in losses, at sentencing, the State simply proffered that restitution should be \$6,881.42. *Id.* In vacating the restitution order, we held that "the prosecutor's representations during the sentencing phase of [Juliano's] trial do not constitute 'competent evidence' of [the

⁵ When we published *Juliano*, the restitution statute was found in Md. Code Article 27, § 807. 166 Md. App. at 538. The statute has since been recodified at CP § 11-601 *et seq.* Nevertheless, the language at issue in Juliano's constitutional argument is substantively identical to the current iteration of CP § 11-603(b).

victim's] loss.” *Id.* at 543-44 (citing *State v. Shelton*, 605 S.E.2d 228, 233-34 (N.C. Ct. App. 2004); *Winborn v. State*, 625 So. 2d 977, 977 (Fla. Dist. Ct. App. 1993)). Nevertheless, because the record clearly established that the victim was entitled to “some measure of recompense” for the losses sustained by Juliano’s theft, and Juliano did “not argue otherwise,” we vacated the restitution order and remanded the case to the circuit court to “conduct a restitution hearing, at which the prosecution [needed to] establish, by competent evidence, the appropriate amount of restitution to be ordered” *Id.* at 544.

Finally, in *In re Cody H.*, the Court of Appeals was tasked with determining whether a restitution claim was sufficiently supported by competent evidence. 452 Md. at 191-92. There, Cody H., a juvenile, struck another juvenile in the face, breaking his jaw. *Id.* at 176. Following adjudication, disposition, and the filing of exceptions, the juvenile court ordered \$1,489.61 in restitution for medical expenses related to the assault, and an additional \$5,000 for the victim’s lost earnings. *Id.* On appeal, Cody H. challenged the restitution order on two grounds: 1) that the restitution statute does not cover lost wages to be earned in the future, and 2) that the restitution order was not supported by competent evidence. *Id.*

In holding that restitution may cover lost wages, the Court of Appeals noted, “for restitution to be proper, the claim for restitution cannot be speculative.” *Id.* at 186 (“Our interpretation . . . does not mean that mere speculative claims will satisfy the statutory requirements for recovery.” (quoting *McDaniel v. State*, 205 Md. App. 551, 563 (2012))). The Court further stated that “restitution cannot cover things that are not certain to occur

in the future.” *Id.* Ultimately, the Court concluded that the restitution order properly awarded lost wages that the victim was “reasonably certain to incur.” *Id.* at 191.

The Court then turned to whether the restitution order was supported by competent evidence. *Id.* at 191-92. The Court stated, “Competent evidence of entitlement to, and the amount of, restitution need only be reliable, admissible, and established by a preponderance of the evidence.” *Id.* at 192 (quoting *McDaniel*, 205 Md. App. at 559). After noting that juvenile restitution proceedings do not require strict application of evidentiary rules, the Court proceeded to consider the victim’s evidence. *Id.*

The Court noted the extent of the evidence introduced in support of the restitution claim:

Here, evidence that [victim’s] loss of earnings was a direct result of the assault by Cody was presented through testimony of [victim] and [victim’s] father, as well as through the [employer’s] letter. [Victim] testified to suffering a broken jaw as a result of being assaulted by Cody. [Victim] also testified to missing weeks of school due to his injuries. Further, [victim] testified that he worked with the tractor, weed whacker, and other small farm equipment during his previous employment at [employer]. When asked why he could not continue to work at [employer], [victim] testified that he was unable to work at [employer] because the vibrations from the farm machinery would cause issues with his healing jaw. Moreover, [victim] testified that it was not his decision to forgo participation in the work study program.

Id. at 192-93. Additionally, the Court noted that the letter from the employer “corroborate[d] and enhance[ed] the reliability of the testimonial evidence.” *Id.* at 193.

The Court held that the evidence supporting the victim’s restitution claim for lost wages was competent, and that Cody failed to overcome the presumption that the restitution was fair and reasonable. *Id.* at 194.

Against this legal backdrop, we now turn to Mr. Inmon's restitution claims.

Regarding Mr. Inmon's claim for dental expenses, he argues that he "proffered a *prima facie* and unrebutted case for restitution in accordance with CP § 11-603(b)," and was accordingly entitled to restitution. He states that the sentencing court was "presented with a bill showing the unreimbursed dental losses that [he] incurred because his tooth was broken and knocked out by" Young.

We hold that the dental bill, standing alone, was not competent evidence to support Mr. Inmon's claim for dental expenses that he incurred as a direct result of the robbery. Other than a copy of the dental bill, Mr. Inmon presented no evidence on this point, and the agreed-upon statement of facts, which served as the predicate for Roberts's and Young's *Alford* pleas, only mentioned that "at one point [Mr. Inmon] was hit with the gun by Mr. Young." The statement of facts did not indicate that Young struck Mr. Inmon in the mouth, or that Mr. Inmon required dental treatment because of the attack.

Although the prosecutor noted that Mr. Inmon mentioned a dental injury in his victim impact statement, neither the prosecutor nor Mr. Inmon's counsel submitted the victim impact statement as evidence at the restitution hearing.⁶ Additionally, although Mr.

⁶ Indeed, the victim impact statement was only mentioned once at the hearing, when the prosecutor stated, "when Mr. Young was charged in this case, which was relatively early on, we received from Mr. Inmon a, a victim impact statement, so to speak. Unfortunately, it doesn't have a date on it, but, but he did, in that statement, reference physical injury and indicated a laceration on his face requiring stitches and a lost tooth." The prosecutor went on to explain, however, that Mr. Inmon failed to list any corresponding economic losses for his dental procedure in the victim impact statement. We note that CP § 11-402(e)(2) states that a victim impact statement must "itemize any economic loss suffered by the victim[.]"

Inmon's counsel argued that Mr. Inmon "did suffer actual medical and dental expenses as a result of" the robbery, an attorney's "representations during the sentencing phase of [the] trial do not constitute 'competent evidence' of [the victim's] loss" for purposes of restitution. *Juliano*, 166 Md. App. at 543.

In his brief, Mr. Inmon relies on CP § 11-615(a) to argue that the dental bill itself was sufficient competent evidence to support restitution for dental expenses. CP § 11-615(a) provides: "In a restitution hearing held under [CP] § 11-603 of this subtitle, a written statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient evidence of the amount, fairness, and reasonableness of the charges and the necessity of the services or materials provided." Under CP § 11-615(a), Mr. Inmon's dental bill was sufficient evidence that the amount sought was fair, reasonable, and necessary, but the bill itself did not establish that Mr. Inmon incurred these costs as a direct result of the robbery, as required by CP § 11-603(a).

Similarly, Mr. Inmon failed to present competent evidence that he incurred rental expenses by fleeing Maryland following the robbery. Although Mr. Inmon's counsel asserted that this claim was related to his failure to pay rent for his apartment, and that he fled the state in fear following the robbery, there is simply no competent evidence in the record to support this assertion. Mr. Inmon's counsel's assertions do not qualify as competent evidence as defined in CP § 11-603(b). *Juliano*, 166 Md. App. at 543. The Maryland Case Search document only verifies that there is a pending contract action between Painters Mill Realty, LLC and Mr. Inmon. That document does not even indicate that the plaintiff, Painters Mill Realty, LLC, is Mr. Inmon's former landlord or that it is

seeking to recover costs pursuant to a lease agreement. Nor is there any evidence that Mr. Inmon fled the state out of fear following the robbery, thereby incurring rental losses. There is simply no competent evidence in the record to support Mr. Inmon's claim for rental expenses.⁷

Maryland caselaw is clear. In order for a victim to obtain restitution, she or he must submit reliable, admissible evidence, tending to show, by a preponderance, that the claimed restitution expenses are a direct result of the crime. *Cody H.*, 452 Md. at 192; CP § 11-603. Mr. Inmon's counsel's unsworn assertions, coupled with documents providing alleged monetary damages, do not suffice. Accordingly, we affirm the circuit court's denial of Mr. Inmon's request for restitution.⁸

**JUDGMENT OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**

⁷ Not only does Mr. Inmon's claim for rental expenses lack competent evidence, but it also suffers from being too speculative. In *Cody H.*, the Court of Appeals stated that "[i]n order for restitution to be proper, the claim for restitution cannot be speculative. . . . the restitution cannot cover things that are not certain to occur in the future." 452 Md. at 186 (citations omitted) (citing *McDaniel*, 205 Md. App. at 563). Because it is far from certain that Painters Mill Realty, LLC will obtain a judgment against Mr. Inmon for \$6,532.65, this claim, as presented to the trial court, was too speculative. *Id.*

⁸ The State, which is nominally an appellee in this case, filed a brief asking us to remand so that the circuit court may hold a restitution hearing and receive evidence. We recently observed that a party seeking to reverse or amend a judgment must note an appeal from that judgment. *Antoine v. State*, No. 2880, Sept. Term, 2018, slip op. at 9 n.4 (Ct. Spec. App. April 14, 2020) (quoting *Paolino v. McCormick & Co.*, 314 Md. 575, 579 (1989)). Furthermore, parties "cannot properly cast themselves as appellees if they are supporting the position of [the] appellant." *Id.*, slip op. at 9 n.4 (quoting *Matta v. Bd. of Educ.*, 78 Md. App. 264, 267 n.1 (1989)).