

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM 2018

No. 32

IN RE: G.R.

**ON PETITION FOR CERTIORARI FROM
THE MARYLAND COURT OF SPECIAL APPEALS**

**BRIEF OF AMICUS CURIAE
MARYLAND CRIME VICTIMS' RESOURCE CENTER, INC.**

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INTRODUCTION

This case involves important restitution policy considerations. The intermediate appellate court improperly ruled that a crime victim taking remedial action (the rekeying of house locks at a cost of \$65) immediately after an armed robbery to redress and mitigate the harm done by the theft of the victim's corresponding house keys, was not a direct result of the delinquent act but rather the result of an "intervening agent," striking on appeal the \$65 lock rekeying costs from the juvenile court's restitution order. This ruling violated not only the victim's constitutional and statutory rights, but it is also inconsistent with the policies of Maryland restitution law, the "juvenile causes" article, and recent decisions in this Court.

STATEMENT OF THE CASE

Amicus accepts the Petitioner's Statement of the Case. Amicus files this brief after obtaining the parties' consent in writing pursuant to Rule 8-511(a)(1).

QUESTION PRESENTED

Where a robbery victim whose house keys are stolen takes the reasonable and prudent action of rekeying the locks that corresponded to the stolen keys, are the costs associated with rekeying the compromised locks a "direct result" of the prior robbery of the corresponding keys, for the purposes of ordering restitution?

STATEMENT OF FACTS

Amicus accepts the Statement of Facts stated in the opinion below(E3-E4).

STANDARD OF REVIEW

The standard of review of a juvenile court's determination whether loss caused by an offense was a "direct result" of the crime, is an application of the statutory standards to the facts presented and is reviewed *de novo*. *In re Cody H.*, 452 Md. 169,181(2017); *Goff v. State*, 387 Md. 327,338(2005). The standard of review regarding the amount of damages is abuse of discretion. *In re A.B.*, 230 Md.App. 528, 531(2016).

ARGUMENT

I. MARYLAND LAW ESTABLISHES A CRIME VICTIM'S RIGHT TO RESTITUTION WITHIN AND AS A PART OF A CRIMINAL OR JUVENILE DELINQUENCY CASE.

An order of restitution in a juvenile and criminal case is designed to restore the losses of a victim who was harmed as a direct result of that unlawful act. In the past, issuance of an order of restitution was solely within the discretion of the court. Now, by statute and constitutional authority, victims have a legal right to an order of restitution under Criminal Procedure Article (CP) §11-603(b), which establishes a legal presumption of restitution when competent evidence is provided.¹ *See e.g., In re Cody H.* at 192. Because a victim's restitution order flows from the offense of involvement or of conviction, a request for restitution from a victim is timely if made at the disposition hearing or at sentencing. *Lafontant v. State*, 197 Md.App. 217,223(2011)(request for

¹ There was no argument below regarding a lack of either a request for restitution or that competent evidence was presented. In that event, restitution is presumptively warranted. CP §11-603(b).

restitution was not filed until the date of the sentencing hearing.). *See also, Chaney v. State*, 397 Md. 460,470 (2007).

A. Maryland’s restitution provisions demonstrate an intent to provide victims with restitution.

Tracing the history of restitution, this Court indicated that “Restitution as a means of penance for criminal behavior has its roots in ancient societies. Stephen Schafer writes that ‘the basis of primitive and early Western law was personal reparation by the offender or the offender's family to the victim.’” *Grey v. Allstate Ins. Co.*, 363 Md. 445,451 (2001). Over time “[w]ith the separation of criminal and civil law and the assumption of full control over the former by the State, the victim eventually lost any right to compensation, at least for personal injury, through the criminal process; any monetary exaction was in the form of a fine that went to the State.” *Id.* at 454-55. More recently, Maryland, like other states and the federal government,² has adopted laws that create a crime victim’s right to restitution and improved mechanisms for victims to collect restitution, including:

- 1809 - Maryland adopted restitution for theft offenses. *Id.* at 456; 1809 Md.Laws, ch.138.
- 1965 - “The first modern enactment [for restitution] in Maryland came in 1965 in the context of juvenile proceedings.” *Id.* at 460; 1965 Md.Laws, ch.260.
- 1974 - In 1974, the Legislature authorized restitution as part of what is now a probation before judgment. *Id.* at 461; 1974 Md.Laws, ch.795.

² Accord. 18 U.S.C., §3771(a)(6)(“Right to full and timely restitution as provided by law.”)

- 1977 - The first authorization of restitution as a direct sentencing option. *Id.* at 461; 1977 Md.Laws, ch.581
- 1989 - Legislation required that if restitution is requested by either the victim or the State and the court does not order it, the court must state its reasons for not doing so. The legislature codified the right of a victim to restitution³ and directed that an order of restitution shall be filed as a judgment in a civil action and shall be indexed and recorded. Judicial discretion not to issue restitution was statutorily limited.⁴ *Id.* at 462; 1989 Md.Laws, ch.487.
- 1994 - Strengthening Maryland’s restitution law to increase the ordering and collecting of restitution in a criminal case. 1994 Md.Laws, ch.475.
- 1994 – Provides State Constitutional rights including the right of crime victims to be treated with dignity, respect, and sensitivity. 1994 Md.Laws, ch.102.
- 1997 – In the Victims’ Rights Act of 1997, implementing Article 47 of the Declaration of Rights, the Legislature enacted the current law. The Act merged the criminal and juvenile restitution provisions and defined the term “judgment of restitution.” As a result, the 1989 legislative changes applied to juvenile cases. The Act also clarified that restitution applied to “direct out-of-pocket losses.” *Id.* at 462-63; 1997 Md.Laws, chs.311&312.
- 2005 – Improvements to facilitate the collection of restitution. 2005 Md. Laws, ch.512.
- 2006 – Expanding a victim’s right to appeal to include restitution, including in juvenile cases. 2006 Md.Laws, ch.260. Overturning by statute this Court’s decision in *Lopez-Sanchez v. State*, 388 Md. 214 (2005).
- 2011 - Allow a victim to request a determination of restitution if a court denied or failed to consider restitution and created a duty for the court to ensure victim’s rights. 2011 Md.Laws, ch.362.

³ See CP §11-603(b)(1)(setting out the presumptive right to restitution).

⁴ See CP §11-605(a)(A court need not issue a judgment of restitution only when the restitution obligor does not have the ability to pay or “extenuating circumstances make a judgment of restitution inappropriate.”)

- 2013 - A statutory remedy to redress a violation of a victim's right and a priority regarding restitution collection on behalf of crime victims was created. 2013 Md.Laws. ch.363.
- 2013 – Creating a priority regarding restitution over other debts for collection purposes, allowing a victim to appeal rather than to seek an application for leave to appeal from a final order, and creating express statutory remedies for the denial of victim's rights. Overturning by statute this Court's decision in *Hoile v. State*, 404 Md. 591(2008). 2013 Md.Laws, ch.363.
- 2016 - Allowing a victim to appeal the denial of a motion to reconsider restitution. Overturning by statute this Court's decision in *Griffin v. Lindsey*, 444 Md. 278(2015). 2016 Md. Laws, chs.540 & 541.
- 2016 – The Justice Reinvestment Act requires inmates to pay 25% of State and local inmate earnings towards restitution. 2016 Md.Laws, ch.515.⁵
- 2018 – Charging the Governor's Office of Crime Control and Prevention in concert with others to coordinate and improve efforts regarding collection of restitution. 2018 Md.Laws, ch.422.

The restitution laws were changed in part because of victims' advocating for their right to restitution without having to file potentially expensive and time consuming separate civil suits, and in part due to public disenchantment with the ineffectiveness of traditional criminal sanctions in curbing criminal and delinquent behaviors. *Grey v. Allstate Ins. Co.*, 363 Md. 445, 458 (2001).("[O]nce the State exacted its retribution, through either fine or imprisonment, there was little or nothing left for a victim to collect from the offender in a civil proceeding."); accord, *State v. Richmond*, 43 P.3d 794, 797-98(Idaho Ct. App. 2002)(The legislature freed the crime victim of the burden of instituting a civil action

⁵ See e.g. <https://conduitstreet.mdcounties.org/2016/04/18/governor-praises-justice-reinvestment-acts-support-for-crime-victims/>(last accessed October 18, 2018)

based on the same conduct, and the court system from unnecessary, repetitive trials.); *State v. Terpstra*, 546 N.W.2d 280, 283(Minn. 1996)(Resolving restitution, the crime victim is freed from the burden of instituting a civil action based upon the same conduct.); *United States v. Cienfuegos*, 462 F.3d 1160, 1168(9th Cir. 2006)(The availability of a civil suit can no longer be considered by the court in deciding restitution.)

Starting with the 1989 legislation, Maryland's restitution laws provided that a victim's out-of-pocket losses would be recoverable in the underlying criminal and juvenile delinquency proceedings without victims needing to file separate civil actions. This Court has described the process of obtaining restitution as a "relatively simple one." *Chaney v. State*, 397 Md. 460, 469 (2007)(Section 11-603(b) provides that 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.) The ability to obtain restitution 'is not an onerous burden; indeed, it should be a relatively simple one.' *Id.* at 471; *Goff v. State*, 387 Md. 327, 350(2005)(Defendants have the burden to show that the damages are not fair and reasonable).

The proof of liability for restitution damages arises only after a juvenile adjudication or criminal conviction has been found by the trier of fact beyond a reasonable doubt, and restitution damages in the criminal or delinquency cases are limited to objectively established pecuniary losses. Those damages do not include pain

and suffering or loss of consortium. Consequently, if victims wish to recoup only their out-of-pocket losses, they need not expend additional funds or time filing a civil suit and potentially “throwing good money (to underwrite a civil suit) after bad,” which in this case, the victim's \$65 rekeying expense would not justify. The changes to Maryland’s restitution law treat victims with dignity, respect, and sensitivity, as required by Article 47 of the Maryland Declaration of Rights, by allowing crime victims to quickly and inexpensively recoup their out-of-pocket losses, including very small ones, as a part of the sentencing or disposition process in the underlying criminal or delinquency case.

II. THE VICTIM’S LOSS HERE WAS A DIRECT RESULT OF RESPONDENT’S CONDUCT AND MARYLAND LAW REQUIRES RESTITUTION IN THOSE CIRCUMSTANCES.

A. A causal nexus existed between this offender's delinquent act and the restitution damages and there were no intervening or superseding acts negating the direct results test.

The Maryland "direct result" legal analysis that is necessary to order restitution to a victim considers whether the restitution damages flowed from the offender's crimes or delinquent acts. In pertinent part, CP §11-603(a) provides:

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:**

...(ii) **direct out-of-pocket loss**; ⁶

These independent statutory provisions each provide a proper basis for the restitution that was ordered below by the juvenile court.

Once Respondent stole the Victim's keys as part of the robbery, the value of the Victim's keys and the house locks they fit was "substantially decreased," indeed they became worthless as security guarantors of those homes. CP §11-603(a)(1). In addition, to repair that damage resulted in a "direct out-of-pocket loss," i.e. the expenditure of \$65 to rekey locks, as a result of the robbery. CP §11-603(a)(2)(ii). As a principal in the robbery, Respondent is liable for the consequences of his delinquent acts. *In re Stewart*, 552 F.3d 1285,1289(11th Cir. 2008)(An offense's harmful effects define the scope of restitution damages.)

This Court analyzed the "natural and ordinary meaning" of the term "direct result" in *Goff v. State*, 387 Md. 327, 344(2005):

"by considering [1] **the express and implied purpose of the statute**, and [2] **by employing basic principles of common sense**, the meaning these words intend to convey." *Schmerling [v. Injured Workers' Ins. Fund]*, 358 Md. 434 (2002) at 444, 795 A.2d at 720. The natural and ordinary meaning of the term "direct result" most certainly includes the damage done to the shower in the instant case. It is clear that Mr. Goff **damaged the shower during and because of the assault** on Mr. Hadley. [3] **No intervening agent or occurrence caused the damage.** Additionally, **no time lapsed between the criminal act and the resulting damage caused.** That leads us to conclude, considering the plain language of the

⁶ Accord, 18 U.S.C., §3663A(c)(1)(B)(applying restitution provisions "**in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.**")(emphasis added)

statute, that the damage to the shower was a direct result of the crime for which Mr. Goff was convicted. (Emphasis added)

1. The damages here occurred during and because of the armed robbery.

In this case, the victim's keys were rendered worthless as security guarantors "during and because of" this armed robbery. "No intervening agent or occurrence caused the damage" and "no time lapsed between the criminal act and the resulting damage caused." None of the offenders here, instead of taking away the victim's keys, bent or broke them in two and immediately discarded the damaged pieces in plain view, which would have demonstrated a complete lack of interest in the keys.

Instead, and because the keys were not merely sentimental items, the necessity of restoring the paired key and house locks' security function was entirely compromised as soon as the keys were stolen because they could have been shared with the offender's confederates and unknown outsiders, and this theft required a reasonable \$65 expense to restore the keys comprised security function with rekeying costs. If the keys had been merely broken in two and discarded, the victim's keys might need to be recut, but the matching locks would still be of value and not need to be rekeyed. However, here, once the Victim's keys were carried away and out of sight, their functional value and the locks they fit as guarantors of the victim's home security could not be restored any more than Humpty Dumpty could be put back together. As this Court confirmed and emphasized in *In re Cody H.*, 452 Md. 169, 195(2017):

"something is a "**direct result**" where there is no intervening agent or **occurrence separating the criminal or delinquent acts and the victim's losses.** (Emphasis added).

An example of an interceding occurrence that made the crime victim's loss not direct is *Williams v. State*, 385 Md. 50, 62-63(2005). In that case, while there was “undeniably a causal link between the theft in Baltimore County and the motorcycles ending up in the Baltimore City impoundment lot, that nexus does not partake of the directness required by the statute” because it was the victim’s inability to produce proof of ownership of the motorcycles which was the direct cause of that victim’s loss. *Id.* at 62-63. An entirely separate and preceding omission of the victim, not having or obtaining proper title to the motorcycles, broke the directness of the link between the motorcycles' theft and that victim’s loss.

2. A commonsense application of the statutory causation provision was not followed below.

A second application standard for what damage qualifies as the "direct result" of a crime or delinquent act was stated by this Court in *In re Cody H.*, 452 Md.

169,185(2017), where this Court stated:

When interpreting legislative intent, we apply the language [of the statute] as written **and in a commonsense manner**... (Emphasis added)⁷

⁷ *See also*, Md. Code, Courts and Judicial Proceedings Article (CJ) §3-8A-02(a)(1)(iii) setting out “Accountability of the child to the victim and the community for offenses committed” as a purpose of the Juvenile Causes Subtitle, and CJ §3-8A-02(b) that the “subtitle shall be liberally construed to effectuate these purposes”, both discussed *infra* at point IV.

The Court below, after incorrectly finding that there was a temporal lapse between the theft of the Victim's house keys and the decreased security value of their corresponding house locks, committed a second error when it failed to properly apply this *Cody* "common sense" test. In this regard, the court below stated:

At the moment that appellant stole J.S.'s *keys*, there was no immediate resultant harm to the *locks* corresponding to those keys. Appellant's delinquent act of robbing J.S. caused no immediate damage to any of the locks, **even if common sense might suggest that a loss of confidence in home security might flow from the theft of the keys.** Instead, the damage occurred when J.S. incurred costs by choosing to replace the three locks, presumably to restore his family's security. (Emphasis added.)

In re G.R., No. 853, 2018 Md. App. LEXIS 479, at *7-9 (Spec. App. May 17, 2018). The court below erred when, unlike the juvenile court, it failed to properly heed this *Cody* "common sense" test of a victim's loss. Here, the Victim's loss of confidence in home security flowed directly from the theft of his house keys, and that loss satisfied (a)(1), and also required an out-of-pocket expense for new keys and rekeyed locks under (a)(2)(ii) of CP §11-603. No future criminal actions of any kind needed to occur before the locks needed to be rekeyed. The determination of the court below that the Victim needed to wait until a housebreaking occurred because of the theft of his house keys, violates this Court's commonsense test. In the *Goff* case, the victim did not have to wait until someone told him he needed a shower, before incurring the expense to replace his damaged shower. "Direct results" do not required immediate harms. Rather, direct results are results that occur without intervening events. For example, under an immediate results test, the future loss of earning that this Court upheld in *In re Cody H.*

would have been invalid. *Accord. McDaniel v. State*, 205 Md.App.

551,558(2012)(‘losses’ covers [victims’ future] dental expenses not yet incurred by the time of the restitution hearing.)

Moreover, describing the victim as an intervening agent when the victim promptly did what reasonable individuals with common sense do when the security and functionality of their house locks is compromised, i.e. rekey the locks or entirely replace the house locks (at a greater expense if they could not be rekeyed) once the security value of the lock and key pair was substantially decreased as a result of a crime or delinquent act, would invalidate the vast majority of out-of-pocket victim losses. Here there was no basis to fault the victim for taking reasonable and commonsense actions to prudently rekey these house locks to re-establish the safety of the victim and the victim’s family.⁸

The appellate court’s ruling below is akin to ruling that an individual who threw a rock through an auto windshield did not “substantially decrease” the value of the windshield or cause a loss that included the cost of a replacement windshield because the cost of the new windshield only emerged after a decision was made by the victim to install a new windshield, i.e., the victim could have driven his vehicle with a broken windshield with a hole in it, but instead chose, of his or her own volition and not because of the rock throwing incident, to get the windshield replaced or repaired. Such reasoning, as a practical matter, would disqualify every victim from obtaining restitution who takes

⁸ By comparison, the victim in *Williams* did not possess proper title for his motorcycles, which reasonable and prudent individuals would have possessed.

reasonable action, even emergency action, to redress the victim's loss. If a victim's remedial actions can be blamed as the "intervening act" disqualifying that victim from ever obtaining restitution, then that interpretation not only undercuts the victim's statutory presumption in favor of restitution contained in CP 11-603(b), but also violates the victim's constitutionally guaranteed right to be treated "with dignity, respect, and sensitivity during all phases of the criminal justice process" as provided in Article 47(a) of the Maryland Declaration of Rights.

3. A third basis supporting the juvenile court's ruling is the overall legislative history of restitution which reflects "the express and implied purpose of the restitution statute."

In *Goff supra* at 344, this Court also stated that when analyzing the natural and ordinary meaning of "direct result":

[because] statutory definitions are not explicitly provided, "we determine the intended scope of the term by applying the language's natural and ordinary meaning, **by considering the express and implied purpose of the statute...**

As shown by the legislative context recounted *supra* at point I.A., prior to the modernization of restitution laws, when obtaining restitution in a criminal and delinquency cases was completely discretionary, offenders regularly argued that courts should not order restitution but should direct victims to file separate civil suits. However, it was within the Legislature's authority to modernize restitution procedures and they did so, and this Court should not act contrary to the Legislature's purpose in those statutes.

Maryland's statutory remedial restitution scheme allows for a "judgment of restitution" to alleviate the harms suffered by victims, rather than requiring victims to: (1)

find and retain civil lawyers; (2) pay new court, service, and counsel fees in order to file an otherwise unnecessary separate civil suit to recover their out-of-pocket damages, assuming those damages are large enough to warrant these new costs and fees; and (3) to wait additional long periods to collect on any such civil judgment, assuming an offender is not by then judgment proof.

III. THE APPLICATION BY THE APPELLATE COURT BELOW OF THE FACTS TO THE LAW WAS FLAWED.

The application by the court below of the facts to the law was flawed. The victim's damage here was not merely the stolen keys. If were just the keys, then presumably the victim could have obtained reimbursement for a new set of keys, after going to a locksmith and having replacement keys cut at some later time. But doing so would be a useless act that no one would undertake once their house keys have been stolen. It is neither prudent nor reasonable to do so since those keys and their matching locks no longer serve their security purpose to protect one's privacy, like any disclosed privacy code or lock combination. If one's credit card is stolen and reported, the card issuing agency does not send a replacement card with the same number as the card that was stolen. The protection offered by that stolen card's code has been compromised and that card is deactivated, and a new account number and card are issued. A stolen key similarly lacks the security protection that the key previously provided. Unless the matching lock is rekeyed and new keys are cut, the mere replacement of a stolen key no

longer serves the commonsense purpose of providing the security to keep out potential intruders.

In the instant case, two pairs of Jordan brand sneakers were also stolen. If only the left shoe of each pair had been immediately recovered, the remaining right shoes, standing alone, would not be of any ongoing value and a court would not limit restitution to the cost of one-half of a replacement pair of such sneakers. The remaining left shoe of a pair is of no value standing alone, just like the remaining house locks are of no value without their matching keys once the keys are stolen by thieves. Locks and keys as well as shoes, come in matched sets. Therefore, it is both reasonable and prudent to replace both parts of the matched set when one part of the matched set is stolen. That is what occurred here. By contrast, the reasoning of the court below leaves the crime victim with no prudent, reasonable, or commonsense restitution remedy for the victim's loss.

Safety of a victim is often the most important issue to a victim. Reasonable and prudent individuals change their locks when their keys are stolen. A key is a device that opens what would otherwise be a closed protected location. Therefore, not considering a victim's safety also denies crime victims their rights to dignity, respect, and sensitivity under Article 47(a) of the Declaration of Rights. *Accord*, Md. Code CP §§11-402(e)(6) and 11-1003(b)(1)&(8). Not feeling safe in one's home and the potential that a stranger could use a stolen key or a copy of that key and enter a victim's home also violates the victim's rights to life, liberty, and property guaranteed by Article 24 of the Maryland Declaration of Rights. Relocating a stolen key sometime after it has been stolen neither

guarantees safety nor peace of mind. In sum, the rekeying of house locks after the matching keys are stolen is not an unnecessary, irrelevant, or unimportant act.

Consequently, the original restitution ruling was correct because once the keys were stolen, and Respondent was neither apprehended nor the keys returned to the Victim at the scene before disappearing out of sight, the Victim suffered a loss and detriment to the Victim's safety and security at those locations and he acted reasonably to immediately redress the damaged premise security, just the same as if a victim's home security camera system had been stolen and that victim immediately went out and bought a replacement.⁹

In addition, here a detriment and reasonable fear arose that warranted immediate action stemming from the Respondent's unapprehended confederates who, as a result of the robbery, also had potential access to the Victim's family's homes, and their property contained therein, that might be targeted for theft, raising these concerns because of the easy access by virtue of the stolen keys, or possibly in retaliation for the Victim's part in precipitating Respondent's arrest after the robbery.

⁹ See footnote 4 of Petitioner's brief where the State cites an Indiana case regarding installation of a new security system. (Pet.Br. p.13, fn. 2) The Indiana court noted that if the victims already owned a security system, they would be entitled to restitution had the defendant harmed or damaged that system. *Rich v. State*, 890 N.E.2d 44, 52 (Ind. Ct. App. 2008). Here, the victim had a more basic and common security system – mechanical locks with keys. Respondent damaged that security system by stealing the keys and the victim is entitled to restitution to fix that damaged system by rekeying the locks.

The objectives of restitution include compensating the victim and rehabilitation of the offender. It is not unreasonable for a victim to rekey locks where the keys are stolen and therefore they are appropriate direct out-of-pocket costs in accord with CP §11-603(b)(b)(2)(ii). Part of rehabilitation is to have offenders understand the logical consequences of their acts and to pay the associated costs that would otherwise have to be borne by the victims. The juvenile court properly ordered the rekeying of the locks and on appropriate facts could have ordered replacement locks.¹⁰ As this Court found in *Goff v. State*, 387 Md. 327, 348-50(2005), replacement or repair is appropriate unless the offender can carry the offender's burden of proof showing that the amount claimed is not fair and reasonable. The victim's decision to not only recut a new key, but to also rekey the locks relates to the amount of damages which the juvenile court determined was reasonable here under the circumstances. Below, after the transportation of keys from the crime scene occurred, the burden of proof shifted to the Respondent to prove that the amount of the loss, here \$65, was not reasonable, which Respondent did not establish before the juvenile court. *See, Goff v. State*, 387 Md. 327,350(2005). Once the victim's stolen keys disappeared with Respondent and his accomplices, the damage was done. There was, by then, no factual basis for the victim or a court to conclude with any confidence that neither detriment nor disadvantage had occurred from this robbery. As a result, the juvenile court did not err by declining to rule that the legal presumption had

¹⁰ While the Respondent below argued that he could not be held responsible for the locks because he never touched the locks, no statute or case law limits restitution only to items an offender has damaged by a physical touching.

been overcome that the victim suffered a detriment at the time his keys were stolen. Regarding the amount of damages, the juvenile court did not abuse its discretion in determining that the value of the direct out-of-pocket loss included rekeying the locks.¹¹

IV. FEDERAL PRECEDENTS, WHICH ARE MORE RESTRICTIVE THAN MARYLAND LAW, SUPPORT A RESTITUTION AWARD IN THIS CASE.

Unlike Maryland law which prescribes only a "direct result" test, the federal test rests on both "directly and proximately" caused harm, as the standard for awarding federal restitution. Both 18 U.S.C. §3663(a)(2) and 18 U.S.C. §3663A(a)(2) provide:

For the purposes of this section, the term "victim" means a person **directly and proximately harmed** as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. (Emphasis added)

Reviewing the federal restitution provision, the Supreme Court in *Roberts v. United States*, 572 U.S. 639 (2014), relying upon its decision the same day in *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), stated that:

...the statute has a proximate cause requirement. See §3663A(a)(2) (defining "victim" as "a person *directly and proximately* harmed as a result of the commission of" the offense (emphasis added)); §3664(e) (Government bears the "burden of demonstrating the amount of the loss sustained by a victim *as a result of* the offense" (emphasis added)). *** And Roberts argues that where, as here, a victim receives less money from a later sale than the collateral was worth when received, the market and not the offender is the proximate cause of the deficiency.

¹¹ While Respondent's challenge below focused on the "direct result" language alleging that the restitution ordered constituted an illegal sentence, the initial challenge also focused on the costs being inappropriate. To that extent, an amount of damages challenged is reviewed for an abuse of discretion.

We are not convinced. The basic question that a proximate cause requirement presents is “whether the harm alleged has a sufficiently close connection to the conduct” at issue.

In *Lexmark, supra* at 133, the Supreme Court discussed the common law basis of the federal causation rules:

For centuries, it has been “a well established principle of [the common] law, that in all cases of loss, we are to attribute it to the proximate cause, and **not to any remote cause.**” *** That venerable principle reflects the reality that “the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing.” *** Congress, we assume, is familiar with the common-law rule and does not mean to displace it *sub silentio*. We have thus construed federal causes of action in a variety of contexts to incorporate a requirement of proximate causation. *** No party disputes that it is proper to read §1125(a) as containing such a requirement, its broad language notwithstanding.

The proximate-cause inquiry is not easy to define, and over the years it has taken various forms; but courts have a great deal of experience applying it, and there is a wealth of precedent for them to draw upon in doing so. *** Proximate-cause analysis is controlled by the nature of the statutory cause of action. The question it presents is **whether the harm alleged has a sufficiently close connection to the conduct the statute prohibits.**

Put differently, the proximate-cause requirement generally bars suits for alleged **harm that is “too remote”** from the defendant’s unlawful conduct. (Emphasis added.)

This Court in *Pete v. State*, 384 Md. 47, 60-61(2004) rejected adopting "proximate causation" as an additional requirement of the Maryland "direct result" test for awarding restitution for State restitution damages, because it was contrary to CP §11-603. *Goff v. State*, 387 Md. 327, 343 (2005)(reiterating that proximate causation was not the standard for restitution in Maryland since it was “clearly contrary” to the plainly worded intent of §11-603). However even under the more stringent federal two part "direct and

proximate" causation standard, the restitution damages here are not too remote. In this case, Respondent's unlawful conduct was an armed robbery. It is not "too remote" to see that if in the course of that robbery that house keys (or a single sneaker) are taken, then the corresponding locks to the stolen house keys (or the remaining matching sneaker) are no longer able to perform their prior function for the individual who was robbed, and that victim is thereby damaged and entitled to a remedy to restore the *status quo*. The harm done here was to the security of the victim's family house keys that he relied upon. The same result would be true if the victim's only "latch key" had been to his neighbor's house where he was welcomed every day after school, and that key had been stolen. These were houses where the victim was authorized to be and whose safety was compromised by the armed robbery, and the restitution judgment properly provided compensation for the resulting harm done. If these houses had subsequently been burglarized or vandalized by individuals with copies of the stolen house keys, then the victim as well as that residence would have been deprived of their safety, security, and property. The victim's loss of the keys and the security of the homes they opened which he was charged to keep safe is what rekeying the locks restored. The keys were stolen in combination with the victim's accompanying materials (phone, school binder, etc.) in the victim's stolen backpack that could identify the victim's homes, and that added to the legitimate concerns about the victim's and his family's safety. Therefore, the harm arising from the Respondent stealing the victim's house keys was related to and not remote from the need to rekey the locks of the victim's family's houses with which those house keys were

paired. Consequently, even under the federal standard, the damages were proximately caused because the keys were closely connected to the locks, and rekeying those locks as a result of their stolen keys was not remote from the criminal violations.

In Maryland, which adopted the less complicated and easier to apply single prong “direct result” standard, changing house locks after the robbery of one's house keys more than satisfies the direct result test. The causal connection required for Maryland's simpler "direct result" legal standard may encompass additional circumstances than are allowed under the federal test, but that situation is not presented by the facts of this case.

V. JUVENILE COURTS HAVE HEIGHTENED AUTHORITY TO ORDER RESTITUTION FROM JUVENILE OFFENDERS BECAUSE RESTITUTION SERVES IMPORTANT REHABILITATIVE FUNCTIONS.

An additional consideration that applies only to juvenile offenders is that a fundamental purpose of the Juvenile Causes Subtitle under CJ §3-8A-02(a)(2)(ii) is “Accountability of the child to the victim and the community for offenses committed.” Moreover, under §3-8A-02(b) the juvenile “subtitle shall be liberally construed to effectuate these purposes.” Emphasis added.¹² Providing restitution for the changing of house locks holds a child who has committed a robbery accountable not only to restoring the safety of that particular victim's residence, but also accountable to the community which has a right to impress upon still malleable juvenile offenders that such street crimes are not insignificant and can inflict real damage to the community's fabric, values,

¹² CJ §3-8A-28 provides “The court may enter a judgment of restitution against the parent of a child, the child, or both...”

and ability to provide a safe and desirable place to work, live, and educate its residents and their families. As explained *In re Cody H., supra*, it is penologically rehabilitative to hold a juvenile responsible for the damages:

Restitution under [§ 11-603] serves several objectives, including: (1) rehabilitation of the defendant; (2) compensation of the victim; and (3) penalizing the transgressor. **One purpose is to compensate victims who have been injured or who have suffered property loss as a result of the wrongful acts of a minor[.] Restitution can impress upon the [juvenile] the gravity of the harm he has inflicted upon another[,] and provide an opportunity for him to make amends. As such, compensation of the victim is an important factor to consider in the overall goal of rehabilitating the juvenile respondent.**

By contrast, limiting the responsibility of a juvenile found involved in the robbing of house keys only to the cutting of replacement keys and not requiring the juvenile offender fully "to make amends" would violate this legal standard and depreciate "the gravity of the harm" inflicted on the robbery victim and on the community, in violation of Article 47(a) of the Declaration of Rights and CJ §3-8A-02(a)(2)(ii). Preventing the juvenile court from ordering the Respondent to fully make amends also undercuts "liberally constru[ing]" the provisions that apply to juveniles, for which the purpose is the "overall goal of rehabilitating the juvenile respondent." In this case, the juvenile was involved with this armed robbery while on probation(E16) eleven days after his release(E20) for other violent offenses(E28), and in the time between this robbery and his arrest had already made a video bragging about this offense on the victim's stolen cell phone(E27). In these circumstances, ordering restitution of \$65 from the juvenile

offender in order to rekey the victim's house locks, in conjunction with the court's order to the Department of Juvenile Services for an out-of-home placement to help rehabilitate Respondent, was neither improper nor inappropriate. *In re Cody H., supra.* Impressing upon a juvenile the logical consequences of his delinquent acts by imposing restitution may induce the juvenile to refrain from future criminal conduct.

Respondent was found involved beyond a reasonable doubt. To require the victim to file a civil law suit, pay court and other costs, wait additional periods of time, and then go out and expend additional funds to collect a civil judgment for this small direct out-of-pocket rekeying fee is unrealistic and:

1. Contrary to Maryland's restitution scheme and the victim's right to restitution within criminal and juvenile delinquency cases;

2. Contrary to the purposes of the "Juvenile Causes" Subtitle to hold juvenile offenders accountable for the harms they cause victims; and

3. Contrary to the interest in judicial economy to minimize otherwise unnecessary duplicative litigation.

The juvenile court was correct that the juvenile justice system must hold youthful offenders accountable and not walk away from, but instead fully make amends to their victims, especially when small dollar amounts are issue.

CONCLUSION

This Court should reverse the ruling of the Court of Special Appeals and reinstate the juvenile court's judgment of restitution.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE **WITH RULE 8-112**

1. This brief contains 6476 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font; spacing, and type size requirements stated in Rule 8-112.

Victor Stone, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2018, two copies of the foregoing Brief of Amicus Curiae Maryland Crime Victims' Resource Center, Inc., were sent first-class U.S. mail, postage prepaid to:

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INTEREST OF THE AMICUS

Amicus Curiae, the Maryland Crime Victims' Resource Center, Inc. (MCVRC), files this brief after obtaining the written consent of both parties pursuant to Rule 8-511(a)(1).

Amicus MCVRC is a non-profit corporate entity that represents the interests of victims of crime to ensure comprehensive judicial consideration of Maryland laws that grant crime victims legal rights in aid of their healing, including the rights to be treated with respect, dignity, and sensitivity guaranteed by Article 47 of the Maryland Declaration of Rights, as well as their rights to receive restitution and justice.

MCVRC continues the missions of the Stephanie Roper Foundation, Inc., and the Stephanie Roper Committee, Inc., founded by Roberta and Vincent Roper after the kidnapping, rape and murder of their daughter, Stephanie. For more than three decades, MCVRC has provided pretrial, trial, and restitution assistance to victims of crime and of delinquent acts and has advocated for policy changes to the criminal justice system. These policy changes have included numerous statutory enactments and the adoption of Article 47 of the Maryland Declaration of Rights that expands the "State vs. Defendant" justice system to include the consideration of the rights of victims. MCVRC believes this appeal is particularly relevant to the overall mission it strives to achieve.

MCVRC has represented crime victims as counsel of record regarding various victim's interests in the State and federal criminal courts as well as in several United States Courts of Appeal. In addition, MCVRC has filed amicus curiae briefs in this

Court, in the Maryland Court of Special Appeals, in the United States District Court for the District of Maryland, in the U.S. Court of Appeals for the Fourth Circuit, and in the United States Supreme Court. These litigation efforts have prepared MCVRC to offer a crime victim's perspective as well as historical background, knowledge, and unique insights not readily available which are often different from and which supplement the positions of the parties, the State and defendant, that can assist the Court in deciding this case.

PERTINENT AUTHORITIES

Md. Code Ann., Courts. § 3-8A-02.

(a) The purposes of this subtitle are:

(1) To ensure that the Juvenile Justice System balances the following objectives for children who have committed delinquent acts:

(i) Public safety and the protection of the community;

(ii) Accountability of the child to the victim and the community for offenses committed; and

(iii) Competency and character development to assist children in becoming responsible and productive members of society;

(2) To hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and the community;

(3) To hold parents of children found to be delinquent or in need of supervision responsible, where possible, for remedying the circumstances that required the court's intervention;

(4) To provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest;

(5) To conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(6) If necessary to remove a child from his home, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents;

(7) To provide to children in State care and custody:

(i) A safe, humane, and caring environment; and

(ii) Access to required services; and

(8) To provide judicial procedures for carrying out the provisions of this subtitle.

(b) This subtitle shall be liberally construed to effectuate these purposes.

Md. Code Ann., Courts. § 3-8A-28

The court may enter a judgment of restitution against the parent of a child, the child, or both as provided under Title 11, Subtitle 6 of the Criminal Procedure Article.

Md. Code Ann., Crim. Proc. § 11-603.

(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;

(iii) loss of earnings; or

(iv) expenses incurred with rehabilitation;

(3) the victim incurred medical expenses that were paid by the Maryland Department of Health or any other governmental unit;

(4) a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle as defined in § 25-201 of the Transportation Article;

(5) the Criminal Injuries Compensation Board paid benefits to a victim; or

(6) the Maryland Department of Health or other governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

(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.

(c) (1) A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor.

(2) A civil verdict shall be reduced by the amount paid under the criminal judgment of restitution.

(d) In making a disposition on a finding that a child at least 13 years old has committed an act of graffiti under § 6-301(d) of the Criminal Law Article, the court shall order the child to perform community service or pay restitution or both.

Md. Code Ann., Crim. Proc. § 11-605.

(a) A court need not issue a judgment of restitution under Part I of this subtitle if the court finds:

(1) that the restitution obligor does not have the ability to pay the judgment of restitution; or

(2) that there are extenuating circumstances that make a judgment of restitution inappropriate.

(b) A court that refuses to order restitution that is requested under Part I of this subtitle shall state on the record the reasons.

Md. Code Ann., Crim. Proc. § 11-1003

(a) The appropriate juvenile services unit should tell a victim of a delinquent act, victim's representative, or witness of the guidelines listed in subsection (b) of this section.

(b) A victim of a delinquent act, victim's representative, or witness:

- (1) should be treated with dignity, respect, courtesy, and sensitivity;
- (2) should be told in advance of dates and times of juvenile court proceedings in the case and should be told if the court proceedings to which the victim, victim's representative, or witness has been summoned will not proceed as scheduled;
- (3) during any phase of the investigative or court proceedings, should be provided, to the extent practicable, with a waiting area that is separate from a child respondent and the family and friends of the child respondent;
- (4) should be told by the appropriate juvenile services unit of financial help, criminal injuries compensation, and any other social services available to the victim and receive help or information on how to apply for services;
- (5) on written request, should be kept reasonably informed by the police or the State's Attorney of the apprehension of a child respondent and of the closing of the case, and should be told which office to contact for information about the case;
- (6) should be told of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by a law enforcement unit when evidentiary requirements for prosecution can be satisfied by other means unless there is a compelling law enforcement reason for keeping it;
- (7) should be told, in appropriate cases, by the State's Attorney of the right to request restitution and, on request, should be helped to prepare the request and should be given advice as to the collection of the payment of any restitution awarded; and
- (8) on written request to the appropriate unit, should be told any time that the child respondent is to be released or escapes.

(c) The Department of Juvenile Services shall make the guidelines in subsection (b) of this section available to the units involved with carrying out the guidelines.

Md. Declaration of Rights, Article 24.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Md. Declaration of Rights, Article 47.

(a) A victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process.

(b) In a case originating by indictment or information filed in a circuit court, a victim of crime shall have the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms "crime", "criminal justice proceeding", and "victim" are specified by law.

(c) Nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding.