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## RECENT DEVELOPMENT

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### ***IN RE TYRELL A.: TRIAL COURTS GENERALLY MAY NOT ORDER RESTITUTION TO AN INDIVIDUAL WHOSE VOLUNTARY PARTICIPATION IN A CRIME OR DELINQUENT ACT RESULTS IN INJURY.***

**By: Andrew Middleman**

The Court of Appeals of Maryland held that Sections 11-601(j) and 11-603(a) of the Maryland Code, Criminal Procedure Article, do not authorize trial courts to order restitution to an individual who suffers an injury while voluntarily participating in a crime or delinquent act, “absent exceptional circumstances.” *In re Tyrell A.*, 442 Md. 354, 383, 112 A.3d 468, 485 (2015). Accordingly, the court of appeals vacated a juvenile court’s restitution order to an individual who suffered nasal injuries while participating in the common law offense of affray. *Id.*

Tyrell A. and Dylan P. engaged each other in a “fist-fight” behind their high school. Many students witnessed the fight, during which Dylan suffered a broken nose and sinus damage.

The State charged Tyrell by juvenile petition in the Circuit Court for Montgomery County with affray and second-degree assault. Tyrell conceded his participation in the affray, and the State withdrew the second-degree assault charge. The circuit court, sitting as a juvenile court, accepted Tyrell’s admission, and found that both Tyrell and Dylan participated in the affray.

The juvenile court placed Tyrell on probation, the terms of which included an order that Tyrell make partial restitution to Dylan for his medical expenses. Tyrell appealed the restitution order.

The Court of Special Appeals of Maryland, relying specifically on sections 11-601(j) and 11-603(a) of the Criminal Procedure Article (“CP”), affirmed the juvenile court’s restitution order. The court of appeals granted Tyrell’s petition for a writ of certiorari to determine, inter alia, whether sections 11-601(j) and 11-603(a) authorized the juvenile court to order restitution to Dylan “under the circumstances.”

The court of appeals analyzed section 11-601(j)’s plain text, context within the Maryland Code, and legislative history. The court also considered policy, and compared sections 11-601(j) and 11-603(a) to their federal analogs.

Sections 11-601(j) and 11-603(a), read together, facially authorize a trial court to order restitution to an individual if the commission of a crime or delinquent act directly caused his personal injury, for which he incurred actual medical expenses. *Tyrell A.*, 442 Md. at 361, 112 A.3d at 472 (citing CP §§ 11-601(j) (defining “victim”); 11-603(a)(2)(i)). The court noted that an individual is not a “victim,” as commonly defined, when his voluntary participation in a crime results in his injury. *Id.* at 364, 112 A.3d at 474. Section 11-601(j), however, does not expressly bar participants in a crime or delinquent act from being deemed a “victim” for purposes of section 11-

603(a). *Id.* at 362-63, 112 A.3d at 473. Thus, the court concluded that the definition of “victim” under section 11-601(j) was ambiguous, which necessitated a deeper exploration into its context within the Maryland Code. *Id.* at 365, 112 A.3d at 474.

The court compared section 11-601(j)’s definition of “victim” to that of six other statutes. *Tyrell A.*, 442 Md. at 365-69, 112 A.3d at 474-77. Like section 11-601(j), none of the statutory definitions of “victim” excludes an individual whose voluntary participation in a crime or delinquent act results in his injury. *Id.* at 365-69 & nn.8-10, 112 A.3d at 474-77 & nn.8-10 (citations omitted).

Similarly, the court compared sections 11-601(j) and 11-603(a) to their analogs under Title 11, Subtitle 8. *Tyrell A.*, 442 Md. at 371-73, 112 A.3d at 478-79. Section 11-801(f), for example, defines “victim” more broadly than section 11-601(j). *Id.* at 371-72, 112 A.3d at 478. Nevertheless, section 11-810(d)(3) prohibits trial courts from ordering restitution to individuals whose voluntary participation in a crime or delinquent act results in their injury. *Id.* at 372, 112 A.3d at 478. Thus, the court concluded that Subtitles 6 and 8 were incongruent, and extended its analysis to section 11-601(j)’s legislative history. *Id.* at 372-73, 112 A.3d at 479.

Senate Bill 417 of 1989 included a definition of “victim” as codified in section 11-601(j). *Tyrell A.*, 442 Md. at 373, 112 A.3d at 479 (citing 1989 Md. Laws ch. 487). However, Senate Bill 417 and other documents in its bill file failed to indicate whether the General Assembly intended sections 11-601(j) and 11-603(a) to mirror sections 11-801(f) and 11-810(d)(3). *Id.* at 373-74, 112 A.3d at 479-80 (citation omitted). Such inconclusiveness led the court to consider the policies underlying a court’s authority to order restitution. *Id.* at 375, 112 A.3d at 480.

The court of appeals noted that trial courts can achieve the rehabilitative, compensatory, and punitive effects of restitution without ordering it to co-participants of a crime or delinquent act. *Tyrell A.*, 442 Md. at 376, 112 A.3d at 481 (citations omitted). Otherwise, sections 11-601(j) and 11-603(a) would generate an “absurd” presumption that an individual is entitled to restitution when his voluntary participation in a crime or delinquent act results in injury. *Id.* at 375-76, 112 A.3d at 480-81. To be sure, the court compared sections 11-601(j) and 11-603(a) to their federal analogs and relevant case law. *Id.* at 377-82, 112 A.3d at 482-85.

The Mandatory Victims Restitution Act of 1996 (“MVRA”), like section 11-603(a), does not explicitly prohibit co-participants in crimes from receiving restitution. *Tyrell A.*, 442 Md. at 377-78 & nn.17-18, 381 n.21, 112 A.3d at 482 & nn.17-18, 484 n.21 (explaining that both mandatory and discretionary federal restitution statutes define and treat “victim” identically) (citing 18 U.S.C. §§ 3663(a)(2), 3663A(a)(2)). However, three federal cases that centered on the MVRA persuaded the court. *Tyrell A.*, 442 Md. at 378-82 & n.18, 112 A.3d at 482-85 & n.18 (discussing *United States v. Lazarenko*, 624 F.3d 1247 (9th Cir. 2010); *United States v. Reifler*, 446 F.3d 65 (2d Cir. 2006); *United States v. Sanga*, 967 F.2d 1332 (9th Cir. 1992)).

The court concluded that Title 11, Subtitle 6 was “unlikely” intended to authorize restitution to individuals who suffer an injury while voluntarily participating in a crime or delinquent act – a “view” supported by the practical outcomes of the competing interpretations. *Tyrell A.*, 442 Md. at 375, 379, 383, 112 A.3d at 480, 482, 485. Having resolved the question presented, the court directed its analysis to the case before it. *Id.* at 383, 112 A.3d at 485.

The court of appeals’s disposition of the case rested on two findings. First, the juvenile court did not make a finding as to the second-degree assault charge against Tyrell. *Tyrell A.*, 442 Md. at 377, 112 A.3d at 481. The court of appeals found, therefore, that Tyrell did not agree to make restitution to Dylan for that charge. *Id.*

Second, the degree to which Dylan voluntarily participated in the affray was not challenged on appeal. *Tyrell A.*, 442 Md. at 377 & n.16, 383, 112 A.3d at 481 & n.16, 485 (noting that affray requires at least two voluntary participants) (citation omitted). The court found, therefore, that “exceptional circumstances of the kind discussed in the federal cases,” under which section 11-603(a) would have authorized a restitution order to Dylan, were not present. *Id.* at 377, 383, 112 A.3d at 481, 485. Accordingly, the court reversed the court of special appeals’s judgment, and vacated the juvenile court’s restitution order. *Id.* at 383, 112 A.3d at 485.

In *In re Tyrell A.*, the Court of Appeals of Maryland held that Title 11, Subtitle 6 authorizes a restitution order to individuals who suffer an injury while voluntarily participating in a crime or delinquent act only in “exceptional circumstances.” *Tyrell A.*, 442 Md. at 383, 112 A.3d at 485. However, the holding leaves open for interpretation the various contexts in which trial courts may apply sections 11-603(j) and 11-603(a).

First, the court assumed without deciding that the definition of “victim” is the same in both criminal and delinquency cases. *Tyrell A.*, 442 Md. at 361 & n.3, 112 A.3d at 472 & n.3. Second, the court concluded without explicitly holding that Dylan was unlikely intended to be considered a “victim” under sections 11-601(j) and 11-603(a).

Moreover, the court did not prescribe a specific legal test by which a trial court can determine whether “exceptional circumstances” exist. Instead, it merely concluded that Dylan’s “relative level[] of voluntary participation” in the affray did not present “exceptional circumstances of the kind discussed in the federal cases[.]”

Thus, *In re Tyrell A.* is susceptible to one of two competing interpretations. One interpretation holds that Dylan was ineligible to receive restitution because he was not a “victim” under section 11-601(j). The other interpretation holds that Dylan was a “victim,” but his voluntary participation in the affray foreclosed the possibility that “exceptional circumstances” were present to the extent that section 11-603(a) would authorize restitution. Trial courts are, therefore, unguided as to the types of cases and circumstances in which they may order restitution to individuals who suffer injuries while voluntarily participating in a crime or delinquent act.