

2012 IL App (1st) 101263-U

SIXTH DIVISION
MARCH 2, 2012

No. 1-10-1263

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 15480
)	
LUIS RIVERA,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on arson conviction affirmed over defendant's claim that the State failed to prove the *corpus delicti* for arson, and that the restitution order was void.

¶ 2 Following a bench trial, defendant Luis Rivera was found guilty of arson, then sentenced to 54 months' imprisonment, and ordered to pay \$4,500 in restitution. On appeal, defendant

contends that the State failed to prove the *corpus delicti* for arson where there was no eyewitness or expert testimony indicating that the fire started as the result of a deliberate criminal act. He also contends that the trial court abused its discretion in ordering restitution in the amount of \$4,500.

¶ 3 At trial, brothers Jesus and Sergio Gonzalez testified that they and defendant had been friends since grammar school. During the evening of July 8, 2009, and into the early morning hours of the next day, Jesus and Sergio were at defendant's house with defendant, Lucas and another unknown person. While there, they consumed a little alcohol, and Sergio and defendant became engaged in a verbal argument. Everyone then went outside where Sergio and defendant were going to resolve the matter with a fistfight. Defendant, however, returned to his house, and Jesus and Sergio went to their home at 1743 North Troy Street in Chicago.

¶ 4 About 15 minutes after they arrived there, Jesus and Sergio heard two loud noises, the second of which sounded like glass breaking. Jesus testified that they ran out of their house and observed defendant standing next to their father's van which was parked across the street about two houses down directly under a streetlight. Defendant's hands were inside the passenger window and moving a little, but Jesus could not observe what was in them. Jesus further testified that Sergio yelled, "I see you," and as soon as defendant backed away from the van, it became enflamed. Sergio also testified that he observed defendant with his arms moving inside his father's van, that he told defendant he observed him, and that as defendant backed away from the van, "[i]t was on fire." Defendant then ran to a vehicle that was waiting nearby, and entered into the back seat. The vehicle was initially driven towards Sergio, but when he started going after it, the driver "started flying in reverse."

¶ 5 Jesus testified that he was with his brother a week later when he observed defendant. Jesus asked defendant, "why he did what he did," and he responded that, "he was gonna talk to his pops and they were gonna pay for it." Jesus further testified that defendant told him that he did what he did because he was "salty," which meant mad. Jesus told defendant that he should call his father himself, but no one ever called. Jesus further testified that he did not tell anyone about this conversation until the day of defendant's trial.

¶ 6 Sergio also testified about this conversation. He stated that Jesus said to defendant, "[a]re you serious? This is what it had to come to?" Defendant replied, "I was salty so that's why I did it." Defendant then said he had talked to his father, and they agreed that they would pay. Jesus then said that defendant had to talk to his father, but no one ever called his father. Sergio testified that he did not tell police about this conversation until the case was already in court. He explained that he did not tell police "until it became constant" that defendant would ask "to pay for his mistake."

¶ 7 Marcelino Gonzalez testified that he does home remodeling work and owned the van in question. When he parked his van on the evening of July 8, 2009, none of the windows were broken. He next observed his van after being awakened by his children who told him that his van was on fire. By the time the firemen arrived, the van "was already burned. The whole front." The van was "totaled," and could not be driven. When asked "the value of the damage," he responded that, "the van alone, I think it was about \$4500, \$5,000, because I had the shelves and the metal racks and all that stuff in it too." Marcelino explained that he had "tools in the back of the van" which he used for work. Marcelino further testified that he purchased the van for \$2,500 a year and a half ago, and after the fire, he received \$125 for it from a junkyard as

salvage. The parties then stipulated that the van "was lit on fire" without Marcelino's consent.

¶ 8 Defendant testified that he had a birthday party for Jesus at his home on the evening in question. During the party, he became involved in a verbal disagreement with Sergio who challenged him to a fight outside. Defendant followed everyone outside, but then told Sergio that there was no reason for them to fight on Jesus' birthday. Everyone then left, and defendant went back inside his home and did not leave again that evening. Defendant denied setting fire to Marcelino's van or offering to pay for the damage. Defendant further testified that he was really good friends with Sergio, and that he is still best friends with Jesus.

¶ 9 At the close of evidence, the court found defendant guilty of arson beyond a reasonable doubt. In doing so, the court noted that the van had been burned shortly after the argument with defendant. The court also noted that the brothers observed defendant with his hands inside their father's vehicle, just before it burst into flames. The court also found that defendant admitted that he was angry and willing to pay restitution.

¶ 10 On appeal, defendant first contends that the State failed to prove the *corpus delicti* of arson where there was no eyewitness or expert testimony indicating that the fire started as the result of a deliberate criminal act. He maintains that this is so because the State did not produce evidence independent of his alleged extrajudicial statement that the fire was of incendiary origin.

¶ 11 When defendant challenges the sufficiency of the evidence to sustain his conviction, our duty is to determine whether all of the evidence, direct and circumstantial, when viewed in the light most favorable to the prosecution, would cause a rational trier of fact to conclude that the essential elements of the offense have been proven beyond a reasonable doubt. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). A criminal conviction will be reversed only if the evidence is so

unsatisfactory or improbable that it leaves a reasonable doubt of defendant's guilt. *Wiley*, 165 Ill. 2d at 297. For the reasons that follow, we do not find this to be such a case.

¶ 12 To sustain defendant's conviction of arson in this case, the State was required to prove that defendant by means of fire or explosive, knowingly damaged any real or personal property having a value of \$150 or more. 720 ILCS 5/20-1(a) (West 2008). Defendant maintains that his alleged admissions were the only evidence that he started the fire, and as such, the *corpus delicti* was not proved.

¶ 13 *Corpus delicti* has been defined as proof of the fact that a crime has actually been committed and that someone is criminally responsible for it. *People v. Drake*, 131 Ill. App. 3d 466, 472 (1985). In a criminal case, an admission or confession by defendant can be considered only if there is corroborative evidence of the *corpus delicti*. *People v. Chavez*, 285 Ill. App. 3d 45, 47 (1996). To prove the *corpus delicti* in an arson case of a motor vehicle, the State must establish: 1) that the burning of a motor vehicle occurred, and 2) that someone was criminally responsible for that burning. *People v. O'Neil*, 18 Ill. 2d 461, 463 (1960). The collaborative proof of the *corpus delicti* need not be beyond a reasonable doubt; rather, there must be "some independent evidence." *Chavez*, 285 Ill. App. 3d at 47-48. The issue is then whether the State presented evidence, independent of defendant's admission, that tended to prove that he was criminally responsible for the fire. *People v. Carter*, 200 Ill. App. 3d 760, 764 (1990).

¶ 14 The record shows that shortly after defendant and Sergio had a heated verbal argument which almost led to a fistfight, Sergio and Jesus left defendant's house and went home. Fifteen minutes after arriving there, they heard two loud noises, the latter of which sounded like glass breaking. When they looked outside, they observed defendant with his hands inside their father's

vehicle which was illuminated by a streetlight. Sergio shouted to defendant that he saw him, and as defendant backed away from the vehicle, it burst into flames. Defendant then fled the scene in a vehicle that was waiting for him as Sergio chased after him. This corroborating evidence established a tendency to inspire belief in the truth of defendant's admission of criminal agency regarding the fire in, and the damage caused to, the van. *People v. Brechon*, 72 Ill. App. 3d 178, 181-82 (1979).

¶ 15 Defendant maintains, however, that the State's failure to present eyewitness or expert testimony demonstrating that the fire was incendiary, rather than accidental, or any testimony suggesting that an accelerant was used was a fatal omission from its case. We do not find this argument persuasive. It is not required that the *corpus delicti* be proved by evidence aliunde the confession or admission of the accused (*Brechon*, 72 Ill. App. 3d at 181-82); and, further, there was eyewitness testimony that defendant had his hands in the vehicle right before it burst into flames, then fled from the scene, leading to the reasonable inference that the fire was incendiary in origin and not accidental (*People v. Moore*, 394 Ill. App. 3d 361, 364-65 (2009)).

¶ 16 Defendant, nonetheless, asserts that his case is similar to *People v. Hougas*, 91 Ill. App. 2d 246 (1968) and *In re D.A.*, 114 Ill. App. 3d 522 (1983), where the reviewing courts found that the *corpus delicti* of arson was not proved. In *Hougas*, defendant's conviction for arson was reversed where the only evidence of arson was defendant's confession to burning a barn on her property, and the fact that a fire burned a building. *Hougas*, 91 Ill. App. 2d at 249-50. In addition, the reliability of the confession was in question because defendant was under psychiatric care and concerned about certain consequences which might have resulted from the possible involvement of her mentally disabled 12-year-old son. *Hougas*, 91 Ill. App. 2d at 249.

The reviewing court held that the hostility between defendant and her husband was evidence of a motive, but that this was insufficient to support the conclusion that the fire was willfully set; and, further, that neither defendant's presence in the house on the same property as the barn nor the meager description of the fire were indicative of any circumstances that the fire was incendiary in origin. *Hougas*, 91 Ill. App. 2d at 250. *Hougas* is thus factually distinguishable from this case, where a fight had occurred shortly before the fire evidencing a motive, defendant was observed by two witnesses with his hands in the van which burst into flames as he backed away from it, and he then fled the scene in a waiting motor vehicle. This evidence which corroborated defendant's admission, clearly distinguishes this case from *Hougas*.

¶ 17 *In re D.A.*, 114 Ill. App. 3d 522, is equally distinguishable. In that case, the reviewing court noted that the fire investigator only testified that there was a fire that started in the second floor bathroom of the building, but did not testify as to the cause of the fire, and no witnesses testified as to that cause. *In re D.A.*, 114 Ill. App. 3d at 525, the court explained that where the independent evidence only established that a building burned, and there is nothing, save the confession alone, which tends to corroborate the element that someone knowingly set the building on fire, the *corpus delicti* has not been proved. Here, unlike *In re D.A.*, the State presented independent evidence which tended to establish that defendant had a motive to act and was criminally responsible for the fire. This quantum of independent corroborating evidence distinguishes this case from *In re D.A.* and proves the *corpus delicti*.

¶ 18 Defendant further maintains that his statement to Jesus did not contain an explicit admission, but, rather, was cryptic and subject to many interpretations. He claims that he could have been offering to pay for the broken passenger window and/or a subsequent electrical fire, or

offering to pay for the van because he was scared or intimidated by the Gonzalez brothers or that his statement could have had nothing to do with the fire. This conjecture does not negate the independent corroborating evidence showing that defendant was responsible for the fire.

¶ 19 Further, and contrary to defendant's contention, defendant was clearly referring to the fire when he said he did it, and would "pay for it." This inference flowed normally from the evidence before the court, which was not required to search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt. *Moore*, 394 Ill. App. 3d at 364-65. We thus conclude that the corroborating evidence of the *corpus delicti* justified the court's consideration of defendant's admission to Jesus, and consequently, that the evidence was sufficient to allow the trial court to conclude that defendant was proved guilty of arson beyond a reasonable doubt. 720 ILCS 5/20-1(a) (West 2008).

¶ 20 Defendant next contends that the court abused its discretion in entering a \$4,500 restitution order against him because there was no reliable evidence that the victim suffered an actual loss of \$4,500 as a proximate result of the arson. Defendant acknowledges that he did not raise this issue below, but maintains that the restitution order was void because it exceeded the court's statutory authority, and therefore, can be reviewed at any time. He also claims that the issue may be reviewed under either prong of the plain error doctrine. The State responds that there is no plain error, and that the court properly exercised its discretion in ordering restitution.

¶ 21 A restitution order that is not authorized by statute is void, and can be challenged at any time. *People v. Fouts*, 319 Ill. App. 3d 550, 552 (2001). Although a void order can be challenged at any time, we must review the order to assess whether it is actually void. *People v. Balle*, 379 Ill. App. 3d 146, 151 (2008). For the reasons that follow, we find that it is not.

¶ 22 The restitution statute authorizes restitution for "actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge." 730 ILCS 5/5-5-6(b) (West 2008). Here, the trial court ordered \$4,500 in restitution based on the representations made by the victim covering his losses. Defendant maintains that there was no reliable evidence that the victim suffered an actual loss of \$4,500, and that the evidence showed only that the actual loss was \$2,500, the value of the van, minus \$125, the amount he received from the junkyard for salvage.

¶ 23 In support of this argument, defendant points out that the victim testified that the value of the van alone was "\$4,500, \$5,000" but that he had purchased the van for \$2,500. We observe, however, that when the victim was asked "the value of the damage," he responded that, "the van alone, I think it was about \$4500, \$5,000, because I had the shelves and the metal racks and all that stuff in it too." Defendant did not object to the representations made by the owner of the van at trial, nor attempt to rebut it, and thus forfeited any issues regarding it. *People v. Day*, 2011 IL App (2d) 091358, ¶48. Waiver aside, the court assessed defendant \$4,500, which reflected the actual losses sustained by the owner of the van based on his testimony at trial. The court's restitution order to that effect was not void or an abuse of discretion.

¶ 24 Notwithstanding, defendant further maintains that the restitution order was not authorized by statute and was thus void because the court failed to consider defendant's ability to pay and specify whether it shall be paid in a single payment or in installments. The restitution statute provides, in relevant part, that taking into consideration the ability of defendant to pay, the court shall determine whether restitution shall be paid in a single payment or in installments. 730 ILCS 5/5-5-6(f) (West 2008).

¶ 25 We observe, once again, that defendant did not object to the alleged error at trial or challenge it in a motion to reconsider, and therefore forfeited the issue on appeal. *Day*, ¶48. That said, we also observe that the trial court's failure to define a specific payment schedule is understandable, given that defendant had yet to serve his prison term and the regularity and amount of his future income, if any, was not known. *People v. Brooks*, 158 Ill. 2d 260, 272 (1994). Moreover, it is appropriate to infer from the trial court's failure to specify a payment schedule that restitution is to be made in a single payment. *Brooks*, 158 Ill. 2d at 272. Under such circumstances, the level of specificity in the restitution order was not unreasonable. *Brooks*, 158 Ill. 2d at 272.

¶ 26 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.