2017 IL App (2d) 150701-U
No. 2-15-0701
Order filed August 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	No. 14-CF-1703
v.	)	
ANTHONY THOMAS,	)	Honorable T. Clint Hull,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in awarding $10,000 in restitution, as the award was supported by an appraisal that, given the absence of a hearsay objection, the court was entitled to credit.

¶ 2 After a bench trial, defendant, Anthony Thomas, was convicted of theft (720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2012)), sentenced to five years in prison, and ordered to pay $10,000 restitution. On appeal, he contends that the amount of restitution must be reduced. We affirm.

¶ 3 The State charged defendant alternatively with theft of property not exceeding $500 in value (720 ILCS 5/16-1(a)(1)(A), (b)(1.1) (West 2012)) and theft of property with a value

exceeding $500 and not exceeding $10,000 (720 ILCS 5/16-1(a)(1)(A), (b)(4) (West 2012)). The property at issue was jewelry that Jane DePauw had kept in her home.

¶ 4 We summarize the evidence that is pertinent to the sole issue on appeal. At trial, DePauw testified on direct examination as follows. In March 2014, she lived in St. Charles with her husband Robert, her daughter Suzanna Kinney, and Kinney's two children. That month, defendant, Kinney's boyfriend, moved in. Robert was seriously ill and spent most of his time in the master bedroom, where the other adults attended him daily. On August 10, 2014, Robert passed away. About two weeks later, DePauw opened up one of her ring boxes and saw that it was empty. Soon, she noticed that other jewelry that she had kept in the bedroom was missing. She was unable to recover any of it.

¶ 5 DePauw testified that the following jewelry was missing: (1) a pair of pearl earrings, set in 14-carat gold; (2) a pair of diamond-stud earrings, total weight one-half carat, set in 14-carat gold; (3) a necklace and matching bracelet; (4) a 14-carat-gold pendant with an "emerald-cut garnet"; and (5) two 14-carat-gold Italian horns. The examination continued:

"Q. *** [Y]ou mentioned before that you noticed that one of your rings was missing?

A. Yes.

Q. Did you—first of all, tell me about that ring?

A. It was a wedding set. It was from a previous marriage. But it was a large solitaire heart-shaped diamond, setting white gold. And the two wedding rings that were with it. One small white gold band. One wider with just three diamonds.

Q. Had that heart-shaped diamond ring ever been appraised?

A. It was. When I first purchased it, it was appraised at $11,000."

Defendant did not object to this testimony.

¶ 6 DePauw testified further that the following additional items had been missing: (1) an emerald ring that had been a gift from Kinney; (2) a "high basket blue topaz marquise cut ring" with no diamonds, also a gift from Kinney; (3) another blue topaz ring with three diamonds on either side, a gift for a work anniversary; (4) a pinky ring that she had purchased for herself; (5) a diamond ring that she had purchased at a clearance sale at Helzberg for about $550; (6) two smaller rings in 10-carat gold that she had purchased for herself; (7) a gold charm bracelet that Robert had given her, with diamonds and numerous charms; and (8) one charm that had not been added to the bracelet. DePauw had given nobody permission to take any of the jewelry.

¶ 7 St. Charles police officer Andrew Lamela testified that, on September 12, 2014, he spoke to defendant in jail. Defendant said that, while he lived at DePauw's home, Kinney gave him some of DePauw's jewelry. At her request, he pawned it and bought heroin for both of them. Defendant said that he had no receipts for any of the jewelry that he had sold, but he gave the address of the store where he had sold it. After the interview, Lamela visited the store, STC Gold, and spoke to the owner, Ronald Haluczak. Haluczak provided four receipts that defendant had signed. Each recorded two transactions. We summarize the receipts.

¶ 8 People's exhibit No. 23 contained (1) a receipt dated June 18, 2014, for one 10-carat 0.5-gram item and one 14-carat 2.5-gram item and a total payout of $45.22, and (2) a receipt dated June 25, 2014, for one 14-carat 7.9-gram item and one item described as "Other" (with a far higher weight but far lower value per gram) and a total payout of $155. People's exhibit No. 24 contained (1) a receipt dated June 30, 2014, for one 14-carat 0.4-gram item and another item described as a 20.7-gram bracelet (with a far lower per-ounce value) and a total payout of $18; and (2) a receipt from July 2014 (no date), listing one 14-carat 4.5-gram item and a total payout

of $70. People's exhibit No. 25 contained (1) a receipt dated July 31, 2012, listing a 14-carat 4.9-gram item and a total payout of $70, which factored in "-8 for stones": and (2) receipt dated July 30, 2014, listing one 14-carat 10-gram "charm bracelet" and a payout of $165. People's exhibit No. 29 contained (1) a receipt dated June 9, 2014, listing a 14-carat 4.3-gram item, a 10-carat 1.8-gram "10k Lt Blu [*sic*] stone ring brushed gold" and a total payout of $90; and (2) a receipt dated June 13, 2014, listing 14-carat 1.7-gram "5 Heart Earrings" and a total payout of $30.

¶ 9 Haluczak testified as follows. He owned STC Gold. In a typical transaction, someone brings in a piece of jewelry, which is first tested for whether it contains gold or silver; if it does, it is then tested for the carat and weighed. At that point, STC Gold offers a price. If the customer accepts, STC Gold pays and, in the process, generates an internal receipt that documents the weight, the carat, and the amount paid out. The receipt might or might not describe the item(s) purchased. Haluczak identified the receipts as to which Lamela had testified. The trial court admitted them into evidence.

¶ 10 Kinney testified that she never took any of the jewelry and never gave any to defendant.

¶ 11 Defendant testified that he received the jewelry from Kinney without knowing that it had been stolen. He pawned some items and used the money to buy drugs for Kinney and himself.

¶ 12 The trial court found defendant guilty of theft of property with a value exceeding $500 and not exceeding $10,000. The presentencing investigation report noted under the heading "Victim Statement" that "no information ha[d] been received from the Victim Restitution Coordinator of the Kane County State's Attorney's Office concerning this case."

¶ 13 At the sentencing hearing, the State urged the trial court to order $10,000 in restitution. The judge asked the basis for this figure. The State responded that DePauw had testified at trial

that the heart-shaped diamond solitaire ring had been appraised for $11,000. Defendant argued that there had been no documentation of the appraisal and no evidence that defendant stole that particular item. He did not contend that the appraisal was hearsay.

¶ 14 The judge inquired whether DePauw had been reimbursed by her insurer for any losses. The State had no information. The judge then stated that the testimony was credible to show the loss and to support restitution of $10,000. However, he would "set the case over" to obtain information on any insurance payout. He noted that the evidence at trial established that DePauw had "suffered a loss at a very minimum of $10,000." Thus, defendant would pay that amount in restitution and serve five years in prison.

¶ 15 Defendant moved to reconsider the sentence, arguing in part that the evidence did not support ordering $10,000 restitution. His motion contended that DePauw's testimony that the diamond solitaire ring had been appraised for $10,000 was hearsay and was unsupported by any other evidence. Further, the motion asserted, there was no evidence that defendant had stolen that particular ring. The court denied the motion. Defendant timely appealed.

¶ 16 On appeal, defendant contends that the restitution award must be reduced. Defendant argues that the restitution figure of $10,000 (the maximum for the Class 3 theft conviction) depended wholly on DePauw's testimony that one item, the ring with a solitaire heart-shaped diamond, was appraised for $11,000 when she obtained it. Without this testimony, there was no specific evidence of value other than the payouts from STC Gold and DePauw's testimony that one diamond ring had cost her approximately $550 at a clearance sale. Defendant reasons that the court erred in relying on such scant evidence. He notes that (1) DePauw did not specify who made the appraisal, when it was made, or the qualifications of the appraiser[1]; (2) the payouts

[1] Although defendant notes in passing that the appraisal was hearsay, he does not contend

from STC Gold, to which defendant now asserted he sold all of the stolen jewelry, were so small as to cast doubt on the $11,000 figure; and (3) there was no evidence that DePauw ever filed an insurance claim for the ring, much less evidence of how much it was insured for (if anything). Defendant requests that we reduce restitution to $643.22, the total payouts from STC Gold.[2]

¶ 17 The State responds that defendant did not object to DePauw's statement and thus the trial court could consider it for whatever probative value it had. The State also cites authority for the proposition that, in general, the owner of property is competent to testify to its value.

¶ 18 In setting restitution, the trial court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim. 730 ILCS 5/5-5-6(b) (West 2012). The court should award the fair market value of the item at the time of the offense. *People v. Rednour*, 279 Ill. App. 3d 1001, 1002 (1996). The award will not be disturbed on appeal unless the court abused its discretion. *People v. Graham*, 406 Ill. App. 3d 1183, 1193 (2010).

¶ 19 There is a dearth of Illinois authority that specifically applies to the crucial evidence here: DePauw's testimony that the ring had been appraised for $11,000. Although the State cites case law holding that a court may consider the owner's opinion of her property's value (see *People v. Richardson*, 169 Ill. App. 3d 781, 784 (1988); *People v. Newton*, 117 Ill. App. 2d 232, 236 (1969)), DePauw did not state her opinion; she only repeated the opinion of another person.

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that the trial court should have excluded it on this ground; that he preserved any hearsay objection; that this court should consider the admission of hearsay as plain error; or that his trial attorney was ineffective for failing to make a hearsay objection at either the trial or the sentencing hearing.

[2]Defendant no longer argues that the State did not prove that he stole the diamond solitaire ring. Thus, we do not consider that potential issue.

¶ 20 We note further that, at trial, the opinion was offered as evidence that the total value of the stolen jewelry exceeded $500. Thus, the appraisal was plainly hearsay (see Ill. R. Evid. 801(c) (eff. Jan. 1, 2011)), and an objection on that ground to its admission would probably have succeeded. See *Hartford Accident & Indemnity Co. v. Dikomey Manufacturing Jewelers, Inc.*, 409 A.2d 1076, 1080 (D.C. App. 1979); *Duncan v. State*, 192 So. 3d 654, 657 (Fla. Dist. Ct. App. 2016). At the sentencing hearing, the court heard no new evidence on the value of the ring and again relied on the appraisal, but defendant raised only a nonhearsay objection. On appeal, as noted, he does not contend that the appraisal should have been excluded as hearsay. Thus, the admission of the appraisal is not at issue. When hearsay is admitted without objection, the trial court may give it its natural probative effect. *Jackson v. Board of Review of Department of Labor*, 105 Ill. 2d 501, 508 (1985); *People v. Collins*, 351 Ill. App. 3d 175, 178 (2004).

¶ 21 Defendant contends that the trial court abused its discretion in relying on the appraisal, as the court received no information on who performed the appraisal; when the appraisal was performed; what criteria the appraiser used; or, indeed, anything else but the bare fact that some person believed that, at some point, the ring was worth $11,000. The State does not respond directly to these criticisms of the evidence.

¶ 22 Under the circumstances, we cannot say that the trial court abused its discretion in setting restitution at the $10,000 maximum for the offense of which defendant was convicted. The court was aware of the weaknesses in the appraisal testimony but chose to credit it anyway. We note that defendant did not contest the fact of the appraisal or the accuracy of the $11,000 figure. The court could reasonably infer that DePauw had sought a competent person to perform the appraisal; and that the appraisal was at least minimally reliable as a "ballpark" figure. Moreover, the $11,000 figure, already $1,000 more than what the State sought, covered only one of a pair of

rings, and these two rings were a small portion of the overall loss for which DePauw was to be compensated. The trial court could reasonably conclude that defendant would not pay more than he owed and that the victim would not receive a windfall. We stress, however, that this conclusion depends on the court's proper consideration of the unobjected-to hearsay evidence. Given that defendant does not now complain of the admission of this evidence, we cannot say that the court abused its discretion in reaching a decision that was partly based on it.

¶ 23 Defendant's argument that the payouts from STC Gold cast doubt on the appraisal is unpersuasive. The receipts did not compel the trial court to find that defendant ever sold the ring to STC Gold. Moreover, even if he did, the payout would have been only for the gold and not for the diamond.

¶ 24 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 25 Affirmed.