2012 IL App (5th) 110259-U

NO. 5-11-0259

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Johnson County.
	)	
v.	)	No. 08-CF-86
	)	
DAWN DRYSDALE,	)	Honorable
	)	James R. Williamson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court did not abuse its discretion in determining the amount of restitution to be paid as a part of the defendant's sentence, the judgment is affirmed.

¶ 2 The defendant, Dawn Drysdale, appeals from the trial court's order denying her motion to reconsider the restitution portion of her sentence for knowing possession of a stolen vehicle.

¶ 3 FACTS

¶ 4 On March 23, 2008, a horse trailer, owned by Chris Ray and stored at his business location in Goreville, was stolen. The business was an equipment auction house. Months later, on August 31, 2008, Ray was traveling through Ozark on his way to New Burnside to pick up a trailer he had purchased when he saw what he thought was his missing horse trailer on property owned by Dawn Drysdale. Ray turned the matter over to local law enforcement.

¶ 5 Deputy Leach traveled to the Drysdale residence and interviewed Dawn about the

trailer. She informed the officer that she purchased the trailer from a man named John, and that she had applied for a homemade title and registration for the trailer in September 2008. The officer looked at the trailer and noted that the vehicle identification number plate had been removed. The trailer matched the description provided by Chris Ray. Deputy Leach asked Dawn for a copy of the bill of sale. She did not have a bill of sale. Dawn told the officer that she purchased it from a man in the Champaign/Urbana area from a newspaper advertisement. She no longer had the newspaper advertisement because she recently shredded the newspapers. During her conversation, she told Deputy Leach that she had brought the trailer down from Chicago, a factual scenario that did not match up with the original Champaign/Urbana purchase story. Ultimately, she acknowledged taking the trailer from Chris Ray's business.

¶ 6 Robert Novotny, a man with whom Dawn Drysdale had a personal relationship, was interviewed. He reported that Dawn asked him to help her haul the trailer at issue from a sales barn.

¶ 7 Chris Ray identified the trailer as his trailer. He told the police that he did not give Dawn permission to take possession of the trailer.

¶ 8 Dawn informed the judge that while she agrees that she was in possession of this trailer, she did not take it from Chris Ray's business. She explained that she bought the trailer in January–two months before it was reportedly stolen.

¶ 9 At the conclusion of the October 14, 2009, hearing, the court concluded that Dawn's plea of guilt was knowing, voluntary, and made with understanding and intelligence.

¶ 10 On that same date, the trial court entered a sentence of 30 months' probation, plus court costs, monthly probation fees, a DNA assessment, and a mental health evaluation, along with completion of any recommended mental health treatment.

¶ 11 The restitution hearing was held on October 14, 2009. Mark Foster, a Country

Financial Insurance Company (Country Financial) employee, testified. He was the claims investigator for the claim made by Chris Ray regarding the 1990 WW make stock trailer reported as stolen on March 22, 2008. Chris Ray provided the insurer with a copy of his sales receipt. He had purchased the trailer on March 12, 2008, for $2,500. Country Financial used the $2,500 amount as the starting point in determining the amount to pay Chris Ray. To that amount, the insurer added 6.25% sales tax and $80 to transfer plates and title (a requirement by the Illinois Department of Insurance in order to pay the actual cash value of a trailer). The total amount added up to $2,736.25. From the total, Country Financial subtracted Chris Ray's $1,000 deductible, and cut him a check for the balance of $1,736.25. After the trailer was recovered, Country Financial had the trailer towed to Insurance Auto Auctions located in Granite City. As required by Illinois law, the type of title was changed, at first to a salvage title and then to a good title as the trailer was undamaged. The trailer was sold at auction for $1,200. Country Financial incurred $575 in expenses in order to tow, store, and sell the trailer. After payment of these expenses, Country Financial netted $625 from the sale of the trailer.

¶ 12 The State contended that Dawn Drysdale should pay $1,000 in restitution to Chris Ray, representing his out-of-pocket insurance policy deductible, and $1,111.25 to Country Financial which represented the amount of money paid to Chris Ray–$1,736.25–less the $625 net amount received after the trailer was sold at auction. Based upon these calculations, the trial court entered a restitution order directing Dawn to pay $2,111.25. Her $1,800 bond money was applied to that amount, leaving the amount still owed at $311.25. A written restitution order confirming these totals was entered at the conclusion of the hearing.

¶ 13 Dawn asked the court to reconsider the sentence by a motion filed on October 20, 2009. The trial court denied the motion on November 18, 2009. That order was appealed

to this court. Because no Supreme Court Rule 604(d) (eff. July 1, 2006) certificate was filed, and with the State confessing the error, we reversed the order and remanded with directions that Dawn be allowed to file a new motion to reconsider sentence and for the court to hold a new hearing. *People v. Drysdale*, No. 5-09-0649 (2010) (unpublished order under Supreme Court Rule 23).

¶ 14 Upon remand, the required 604(d) certificate was filed. The parties appeared before the court on June 1, 2011. Dawn indicated that she would stand on her original motion. The motion was taken under advisement. On June 2, 2011, the court entered its order denying the motion. From this order, Dawn appeals, contending that the trial court's restitution order was incorrect because the amount ordered was greater than the expenses and losses proximately caused by her crime. She also alleged that the restitution order was improper because the trial court did not take into account her ability to make payments and also failed to set up a restitution payments schedule. The State filed a motion asking us to conclude that this issue is moot because the defendant had already made full restitution. The State supplemented the record with documentation verifying the restitution payments. In an order entered October 4, 2012, we dismissed this issue as moot.

¶ 15 LAW AND ANALYSIS

¶ 16 Trial judges imposing sentence following a conviction have the ability to order the defendant to make restitution. 730 ILCS 5/5-5-6 (West 2008). Restitution may be imposed "in cash, for out-of-pocket expenses, damages, losses, or injuries found to have been proximately caused by the conduct of the defendant." 730 ILCS 5/5-5-6(a) (West 2008). The purpose of restitution is "to compensate crime victims for all of the injuries they suffered at the hands of the defendant and to make the defendant pay all the costs of his crime." *People v. McGruder*, 307 Ill. App. 3d 970, 972, 718 N.E.2d 1057, 1058 (1999). The restitution ordered should be connected to the conduct from which the defendant was

convicted. *People v. McClard*, 359 Ill. App. 3d 914, 915-16, 834 N.E.2d 984, 985 (2005); *People v. Mahle*, 57 Ill. 2d 279, 284, 312 N.E.2d 267, 271 (1974). On appeal, the trial court's restitution order will not be reversed unless the order constitutes an abuse of discretion–if no reasonable person would have taken the same position as that of the trial judge. *In re Shatavia S.*, 403 Ill. App. 3d 414, 418, 934 N.E.2d 502, 505 (2010). To reverse the order, the court on appeal must conclude that there is no factual or evidentiary basis to support the trial court's order. *Id*.

¶ 17 In this case, the defendant pled guilty to possession of a stolen vehicle. The restitution ordered was connected to expenses incurred by Chris Ray and his insurer following the disappearance of the trailer. Because she was not charged with stealing the trailer, the defendant argues that she should not have been responsible for all of those charges. The defendant does not argue that no restitution was warranted, but argues with the calculation method employed. She contends that the trial court should have ordered her to pay an amount equal to the difference between the trailer's value when she was found to be in possession of it (August or September 2008) and $1,200–the amount that the trailer brought at auction in September 2009. She argues that she cannot be held responsible for any loss in value of the trailer between the day the trailer was stolen and the day the trailer was found–a period of approximately six months.

¶ 18 The defendant's argument that the trailer value was inflated, and thus improper, fails for two reasons. The date included in the charging instrument, in this case, September 2, 2008, is not a date which must be strictly proven. See *People v. Alexander*, 93 Ill. 2d 73, 77, 442 N.E.2d 887, 889 (1982). The trailer was found to be within the defendant's possession on or about that date, but that date certainly does not mean that she did not possess the trailer before then. In keeping with the timing aspect of possession, the defendant's own judicial admissions belie her contention that she did not possess the trailer before September 2008

and thus cannot be held responsible for any increased value dating back to the date on which the trailer was stolen. The defendant admitted at her plea hearing that she possessed the trailer in April and May of 2008 and that she used it during that time frame to haul horses. Additionally, the defendant never argued at the trial court level that the value assessed for the trailer should be reduced due to depreciation. No valuation evidence was introduced by the defendant to support this theory. Because the defendant did not present evidence in support of her contention of depreciated value, the trial court's reliance upon the insurance company's valuation calculation cannot be construed as an abuse of discretion. *People v. Rednour*, 279 Ill. App. 3d 1000, 1002, 665 N.E.2d 888, 889 (1996). We cannot speculate that the value of the trailer had depreciated and will not conclude that the trial court's valuation constituted an abuse of discretion.

¶ 19 Alternatively, the defendant argues that the value of the trailer was inflated, and she should not owe Chris Ray the amount ordered by the court. The defendant contends that just a few days before the trailer was stolen, Chris Ray purchased the trailer for $2,500. The $2,500 amount was the insurance company's starting point in determining the amount to pay Ray. To that amount, they added sales tax and an Illinois Department of Insurance $80 fee for title and plates transfer, which resulted in a total "value" determined by the insurer of $2,736.25. Because Chris Ray was paid $1,736.25 (after subtraction of his $1,000 deductible), the defendant argues that Ray's actual out-of-pocket loss would only have been the difference between that amount and the $2,500 he spent in purchasing the trailer–$763.75–not the $1,000 allocated to him by the court as reimbursement for his deductible. The exact amount the defendant alleges Chris Ray was overpaid was $236.25–representing the amount of the sales tax and transfer fee.

¶ 20 The defendant's argument that the trial court abused its discretion by awarding Chris Ray the extra $236.25 fails. There is no evidence that the sales tax aspect of that extra

amount was not incurred by Chris Ray. While the defendant argues that Chris Ray should not have been awarded the sales tax, she provides no evidence that this was not an out-of-pocket expense he incurred when he purchased the trailer. Furthermore, Illinois regulations governing insurers mandate that the insurer include both the sales tax and the title transfer fee in paying a claim of this type. 50 Ill. Adm. Code 919.80 (2002). We conclude that the trial court's order was not erroneous for including the tax and title transfer fee.

¶ 21 Finally, the defendant argues that the trial court should not have ordered her to pay a $65 fee for transferring title to the auction buyer. She agrees that she would have been responsible for any expenses associated with recovering and auctioning the trailer, but argues that because the insurer was not mandated by law to pay to transfer the title to the auction buyer, she should not be responsible for that fee. We find that the inclusion of this fee in the restitution order was proper. The test for whether an expense is reimbursable is whether the out-of-pocket expense was proximately caused by conduct of the defendant. 730 ILCS 5/5-5-6(a) (West 2008). Whether or not the insurance company voluntarily paid the fee, as opposed to being statutorily required to do so, does not change the nature of the fee. The fee still proximately flows from the crime charged–that the defendant was in possession of a stolen vehicle.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we find that the trial court's restitution order did not amount to an abuse of discretion. The judgment of the circuit court of Johnson County is hereby affirmed.

¶ 24 Affirmed.