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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-423

Filed 19 February 2025

Yancey County, Nos. 23 CRS 232540, 59

STATE OF NORTH CAROLINA

v.

MATTHEW EDWARD CARR

Appeal by defendant from judgment entered 29 November 2023 by Judge R. Gregory Horne in Yancey County Superior Court. Heard in the Court of Appeals 15 January 2024.

Attorney General Jeff Jackson, by Assistant Attorney General J. Brooke Schmidly, for the State.

Michelle Abbott, for defendant.

ARROWOOD, Judge.

Matthew Carr (“defendant”) appeals from the trial court’s judgment entered 29 November 2023. For the following reasons, we vacate the judgment and remand to the trial court.

I. Background

On 11 February 2023, defendant was indicted on one count of second-degree burglary, one count of felony larceny, one count of possession of firearm by a felon, and one count of larceny of a firearm. On 20 March 2023, defendant was indicted for being a habitual felon. At trial the State presented evidence tending to show the following.

Gary McCollum (“McCollum”) owned a home in Yancey County, North Carolina. On 22 November 2022, McCollum and his wife were in Florida visiting their son, but had left their home in Yancy County fully secured with security cameras. These cameras were motion sensitive, and on that day sent a notification to McCollum of movement at the residence. One of the videos showed a rifle belonging to McCollum being carried out of the house. McCollum contacted the police, and once he arrived home after Thanksgiving, compiled a list of everything missing, which included a .308 rifle, a portable safe containing military mementos and an assortment of gold coins and silver ingots, various electronics, and cameras; McCollum estimated that the overall loss including damage to the home was around \$40,000.00.

On 10 January 2023, Detective Brandon Wilson (“Detective Wilson”) became involved with the investigation, and that same day McCollum found in his mailbox a personalized knife that had been stolen accompanied by a note, which read: “This is who broke in your house, Brett Raines and J.R. Hollifield from Marion, North Carolina, on Hankins Road. They sold coins in an Asheville coin store. They sold me this knife and was talking about it.” When Detective Wilson spoke with Ms. Raines,

she stated that she had no knowledge of the theft, but that she did sell coins with defendant at a flea market. Detective Wilson then interviewed the owner of the coin shop who confirmed that defendant had sold coins to him, and Detective Wilson confirmed that the coins sold matched those stolen from McCollum's home.

On 11 February 2023, defendant was pulled over by Sergeant Joe Pate who contacted Detective Wilson after running defendant's tags. Upon searching defendant's vehicle, Detective Wilson found items consistent with those McCollum said were stolen, as well as clothing that was very similar to the clothes worn by the person seen on the video footage removing the rifle from McCollum's home. Detective Wilson recovered C-clamps and a socket set from defendant's car that McCollum also identified as being his.

Detective Wilson learned that defendant used a storage unit, and after obtaining a search warrant for it, located several items belonging to the McCollum's, including a Kindle, an iPad case, cameras, binoculars, as well as several items that indicated defendant used the storage unit.

At the close of the State's evidence, defendant testified in his own defense and denied breaking into the McCollum residence. He further testified that he was not the man in the surveillance camera footage.

On 29 November 2023, defendant was found guilty on all charges. He then pleaded guilty to attaining habitual felon status. He was sentenced to consecutive terms of 146 to 188 months imprisonment for the burglary and possession of a firearm

charges; and 110 to 144 months on the larceny charges. Defendant was also ordered to pay \$38,141.80 in restitution and \$4,802.50 in attorneys' fees.

II. Discussion

On appeal, defendant raises two issues: whether the trial court erred in ordering restitution when the State did not provide sufficient evidence to support the amount awarded, and whether the trial court erred in entering an award of attorney fees against defendant without providing him notice and an opportunity to be heard. The State concedes the trial court erred with respect to these issues therefore we vacate and remand the restitution and attorney fees award for further proceedings.

A. Restitution Award

“On appeal, we review *de novo* whether the restitution order was ‘supported by evidence adduced at trial or at sentencing.’” *State v. Wright*, 212 N.C. App. 640, 645 (2011) (quoting *State v. Shelton*, 167 N.C. App. 225, 233 (2004)). Under North Carolina law,

If the defendant is being sentenced for an offense for which the victim is entitled to restitution under Article 46 of this Chapter, the court shall, in addition to any penalty authorized by law, require that the defendant make restitution to the victim or the victim's estate for any injuries or damages arising directly and proximately out of the offense committed by the defendant.

N.C.G.S. § 15A-1340.34(b) (2024). An award of restitution must be supported by sufficient evidence in the form of specific testimony or documentation; a plain restitution worksheet or “unsworn statements of a prosecutor” will not suffice. *State*

v. Hunt, 250 N.C. App. 238, 253 (2016). Further, “there must be something more than a guess or conjecture as to an appropriate amount of restitution.” *State v. Daye*, 78 N.C. App. 753, 758 (1986).

Defendant contends, and the State concedes, that the restitution amount ordered by the trial court was not supported by sufficient evidence. At the sentencing hearing, the State presented the restitution worksheet along with State’s Exhibit 36, a “Stolen Property List” that McCollum compiled, which detailed the stolen or damaged items and their costs. Given that it was the only documentary evidence, the “Stolen Property List” fails to support the restitution award for several reasons. First, the list does not provide the appropriate detail upon which an award can be made. The amounts are rounded, with symbols indicating that these are estimates. Second, there are items listed on the list that were recovered during the investigation, such as the Kindle, cameras, and hardware. Finally, McCollum compiled the list for both law enforcement and his insurance company. However, no testimony was provided that referenced any insurance payout or pending insurance payout, so there is no way of determining whether items were returned to the victims or whether the victim were reimbursed for items not returned. Therefore, the trial court erred in entering the restitution order.

B. Award of Attorney Fees

“The trial court’s decision to award attorneys’ fees is reviewed under the abuse of discretion standard.” *Crist v. Crist*, 145 N.C. App. 418, 424 (2001) (citation

omitted). The question of whether the trial court provided the defendant with the appropriate notice before imposition of attorneys' fees is a question of law which we review de novo. *State v. Young-Kirkpatrick*, 272 N.C. App. 404, 413 (2020).

When an indigent defendant is determined to have the means to pay for some of the legal services rendered on his behalf, the Court must order this sum paid to the State. N.C.G.S. § 7A-455(a) (2024). However, "before entering a judgment for attorneys' fees against an indigent defendant, the trial court must afford the defendant notice and opportunity to be heard regarding the fees charged." *Young-Kirkpatrick*, 272 N.C. App. at 413 (citation omitted). "With respect to counsel fees incurred under § 7A-455, the interests of defendants and their counsel may not always align." *State v. Friend*, 257 N.C. App. 516, 517 (2018). The court "must provide criminal defendants, personally and not through their appointed counsel, with an opportunity to be heard" on the matter of attorneys' fees. *Id.* at 517–18.

At no point during the proceedings did the court advise defendant of his right to be heard on the matter of attorneys' fees or ask if he wished to be heard with respect to amount of the award. The court ordered that the attorneys' fees be docketed as a civil judgment, then asked only defendant counsel if she wished to be heard, which she declined. Therefore, the award of attorneys' fees was improper.

III. Conclusion

For the foregoing reasons, we vacate the orders related to restitution and attorneys' fees, and remand to the trial court for proceedings not inconsistent with

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Opinion of the Court

this opinion.

VACATED AND REMANDED.

Judge COLLINS concurs.

Judge STADING concurs by separate opinion.

Report per Rule 30(e).

STADING, Judge, concurring, writing separately.

With respect to both issues presented, I reach the same result as the majority. That said, I write separately to address the quantum of evidence required to support an award of restitution.

The applicable statute provides:

§ 15A-1340.35. Basis for restitution.

(a) In determining the amount of restitution, the court shall consider the following:

....

(2) In the case of an offense resulting in the damage, loss, or destruction of property of a victim of the offense:

a. Return of the property to the owner of the property or someone designated by the owner; or

b. If return of the property under sub-subdivision (2)a. of this subsection is impossible, impracticable, or inadequate:

1. The value of the property on the date of the damage, loss, or destruction; or

2. The value of the property on the date of sentencing, less the value of any part of the property that is returned.

N.C. Gen. Stat. § 15A-1340.35(a)(2) (2023).

Our case law notes “a restitution worksheet, unsupported by testimony or documentation, is insufficient to support an order of restitution.” *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011) (citation omitted). “Nonetheless, the quantum of evidence needed to support a restitution award is not high.” *Id.* “When . . . there is some evidence as to the appropriate amount of restitution, the

recommendation will not be overruled on appeal.” *State v. Hunt*, 80 N.C. App. 190, 195, 341 S.E.2d 350, 354 (1986).

Here, the State submitted a restitution worksheet requesting \$38,141.80. In support, it offered documentary and testimonial evidence. At trial, the victim testified about a stolen safe containing gold, silver, two-dollar bills, tools, and military memorabilia that were “particularly irreplaceable.” He also testified about a stolen firearm in a case, cameras, electronics, and damage to the property. With respect to his loss, the victim testified, “I don’t remember the overall total. It was on the order of \$40,000, I believe.” The victim also made an itemized list of stolen items and property damage, which was admitted into evidence as State’s Exhibit No. 2 and readmitted as State’s Exhibit No. 36 at sentencing. His itemized list of stolen items and property damage was quite detailed: some items were accompanied by a description or by website links; some were followed by dollar values; and some of those values were preceded by a tilde—denoting an estimated value. A number of his knives were carefully described but not accompanied by a value. Similarly, the property damage outlined in the itemized list did not provide the amount of loss.

Considering our case law, I do not take issue with the estimated values, as demanding a more exacting standard imposes a greater burden than necessary on the victim. For example, in *State v. Hunt*, the victim testified that his hospital bill was \$10,364.00 and doctor’s bill “around” \$8,000.00. 80 N.C. App. at 195, 341 S.E.2d at 354. Since there was “some evidence” supporting the appropriate amount of

restitution, our Court found no basis to overrule the trial court's order that the defendant pay restitution in the amount of \$18,364.00. *Id.*

Given the missing values associated with some of the items noted on the victim's itemized list of stolen and damaged property, I agree "that the appropriate course here is to [vacate and] remand for the trial court to determine the amount of damage proximately caused by defendant's conduct and to calculate the correct amount of restitution." *Moore*, 365 N.C. at 286, 715 S.E.2d at 849–50. Therefore, on remand, the trial court must discern the value of those items where no such value was provided. In reaching its determination on remand, I would hold that the estimated values provided by the victim are sufficient according to precedent.