

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-01-002
- vs -	:	<u>OPINION</u> 11/16/2009
DEREK J. CAMPBELL,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-08-1480

Robin N. Piper, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Charles M. Conliff, P.O. Box 18424, Fairfield, Ohio 45018-0424, for defendant-appellant

RINGLAND, J.

{¶1} In the early morning hours of May 7, 2008, the Hamilton Fire Department received a call reporting a fire at 201 Hensel Place in the city of Hamilton, Butler County, Ohio. The fire turned into a four-alarm blaze that took more than ten hours to extinguish and destroyed a vacant, two-story, four-unit apartment building owned by Thomas Mulligan. The HFD's fire and arson investigator, Thomas Angst, determined that the fire originated in the attic of the apartment building. Investigator Angst was told at the scene that the fire had been started by a "kid named Derek." Two weeks later, Investigator Angst learned from Scott Logsdon that the suspect's full name was Derek Campbell,

who had told Logsdon he was staying in the apartment building and "had set a fire to stay warm, and it had gotten out of control."

{¶2} In July 2008, Campbell was arrested for criminal mischief by police in Salida, Colorado after he allegedly had scrawled the word "arson" numerous times on public and private buildings. Campbell was returned to Ohio after he waived extradition to pending charges arising out the apartment fire.

{¶3} In October 2008, Campbell was indicted by the Butler County Grand Jury on one count of arson, a felony of the fourth degree, in violation of R.C. 2909.03(A), and one count of criminal trespass, a misdemeanor of the fourth degree, in violation of R.C. 2911.21(A)(1). Following a jury trial, Campbell was convicted of both charges and sentenced to serve 15 months in prison for his arson conviction and 30 days in jail for his criminal trespass conviction, with the sentences to be served concurrently. Campbell was also ordered to pay \$100,000 in restitution to Mulligan.

{¶4} Campbell now appeals his convictions and sentence, raising six assignments of error, which we shall address in an order that facilitates our analysis of the issues raised therein.

{¶5} Assignment of Error No. 2:

{¶6} "THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUPPORT CONVICTIONS FOR ARSON AND CRIMINAL TRESPASS."

{¶7} Assignment of Error No. 3:

{¶8} "THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶9} Campbell's second and third assignments of error raise similar issues, and therefore will be addressed together.

{¶10} Campbell argues his convictions for arson and criminal trespass were

against the sufficiency and manifest weight of the evidence because the state failed to prove beyond a reasonable doubt that he was the perpetrator of those offenses. We disagree.

{¶11} "An appellate court, in reviewing the sufficiency of the evidence supporting a criminal conviction, examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Carroll*, Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117. After examining the evidence in a light most favorable to the prosecution, the appellate court must then determine if 'any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' *Id.*

{¶12} "Unlike a sufficiency of the evidence challenge, a manifest weight challenge concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other. *Carroll* at ¶118. An appellate court considering whether a conviction was against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of witnesses. *State v. Good*, Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25, citing [*State v.*] *Hancock*, [108 Ohio St.3d 57], 2006-Ohio-160 at ¶39. Under a manifest weight challenge, the question is whether, in resolving conflicts in the evidence the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *Good* at ¶25. This discretionary power would be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. *State v. Heflin*, Summit App. No. 21655, 2003-Ohio-7181, ¶5." *State v. Hart*, Warren App. No. CA2008-06-079, 2009-Ohio-997, ¶17-18.

{¶13} In this case, the state presented overwhelming evidence to show that

Campbell trespassed on Mulligan's premises at 201 Hensel Place in violation of R.C. 2911.21(A)(1) and knowingly set the fire that burned down Mulligan's apartment building in violation of R.C. 2909.03(A)(1).

{¶14} Logsdon testified that Campbell told him that he was staying in Mulligan's apartment building and "had set a fire to stay warm, and the fire had gotten out of control." When Logsdon asked Campbell "if he had called it in *** when he noticed that it was out of control," Campbell said "no," adding "[e]ventually somebody usually does," but he just got "out of there." Logsdon described Campbell's demeanor when he was talking about setting the fire as "[v]ery calm."

{¶15} Carla Hermans testified that Campbell told her that while he was staying in a vacant apartment complex, "he lit a small fire because it was still getting cold out" and the building had caught on fire right after he left. Campbell also told Hermans that he was worried the police would be looking for him. When asked what Campbell's demeanor was like when he discussed the fire, Hermans testified: "It wasn't like he felt bad about it. It wasn't like he was boasting, Oh, I caught this place on fire. It was just like there was not lots of remorse, if that makes sense."

{¶16} Arthur Foster testified that he watched the fire with Campbell at Thomas McClure's house and that "[Campbell] really was focused on watching the fire. He didn't want to leave. He had his spot where he wanted to be watching it for awhile. We watched it for a good while." Later that same day, Campbell told Foster that he had gone into Mulligan's apartment building, went into the attic, and started a fire because it was so cold, but claimed he "put it out himself by putting a board over it and *** urinating on it, too."

{¶17} McClure testified that Campbell told him that he had set the fire at the vacant apartment building because he was cold and wanted to get warm. At first,

McClure did not believe what Campbell had told him because Campbell "was a little messed up that night," and so McClure just "kind of blew it off." However, within a week, McClure asked Campbell about the fire again because McClure was bothered by the fact that children lived next door to the apartment building. McClure testified that Campbell said something like, "screw the kids," and that "he would get in a lot of trouble," and then said, "well, they got to prove it."

{¶18} The state presented testimony showing that Campbell, knowing he was a suspect in the fire and that the police were looking for him, cut his hair with the purpose of "trying to disguise himself from the cops." Campbell then fled to Colorado, telling one witness he was afraid of being caught, and telling another, "if they couldn't find him, they wouldn't catch him." Campbell's flight and his efforts to avoid capture provided additional, strong evidence of his guilt on the arson and criminal trespass charges. See *State v. Taylor*, 78 Ohio St.3d 15, 27, 1997-Ohio-243.

{¶19} The state also presented evidence showing that Mulligan's apartment building was worth far more than \$500, thereby rendering the arson charge a felony of the fourth degree. See R.C. 2909.03(B)(2)(b). Also, it was undisputed that Mulligan had never met Campbell before the fire, and thus, never gave him permission to enter or remain on his premises, which had been kept locked and otherwise secured before the fire. See R.C. 2911.21(A)(1).

{¶20} When the evidence is looked at in the light most favorable to the state, it is apparent that the prosecution presented overwhelming evidence to establish Campbell's guilt beyond a reasonable doubt as to every material element of arson and criminal trespass, and thus his convictions for those offenses were not against the sufficiency of the evidence. See *Hart*, 2009-Ohio-997 at ¶17. See, also, *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52.

{¶21} Campbell's convictions are also not against the manifest weight of the evidence. While none of the state's witnesses actually saw him set the fire and two of the witnesses had been involved in minor altercations with him, the four witnesses who testified that Campbell had admitted to setting the fire provided remarkably similar testimony regarding Campbell's actions on the night in question. The testimony of these witnesses, along with the evidence of Campbell's efforts to avoid capture, provided overwhelming evidence of Campbell's guilt on the arson and criminal trespass charges. Thus, even when the credibility of the witnesses is considered, this is clearly not an instance where the jury "lost its way" or "created a manifest miscarriage of justice" by convicting Campbell as charged. *Id.*, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶22} Therefore, Campbell's second and third assignments of error are overruled.

{¶23} Assignment of Error No. 1:

{¶24} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY OVERRULING HIS MOTIONS REGARDING THE COLORADO EVIDENCE."

{¶25} Campbell argues the trial court erred by overruling his motion to suppress any statements he made to Colorado police, because the Colorado police continued to question him after he had invoked his right to counsel, and therefore violated his right against self-incrimination. In the alternative, Campbell argues the trial court should have found the evidence gathered by the Colorado police to be inadmissible "other acts" evidence under Evid.R. 404(B).

{¶26} In *Miranda v. Arizona* (1966), 384 U.S. 436, 467-473, 86 S.Ct. 1602, the court held that the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination requires that when a suspect is placed in custodial interrogation, the

suspect must be advised he has a right to remain silent; anything he says can be used against him in a court of law; he has the right to the presence of an attorney; and if he cannot afford an attorney, one will be appointed to him prior to any questioning if he so desires. *Miranda* also held that if the suspect indicates he wishes to remain silent, the interrogation of the suspect must cease, and if the suspect requests counsel, the interrogation must cease until an attorney is present. *Id.* at 473-474.

{¶27} In *Edwards v. Arizona* (1981), 451 U.S. 477, 484-485, 101 S.Ct. 1880, the court held:

{¶28} "[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation, even if he has been advised of his rights. [Footnote omitted.] We further hold that an accused *** having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police.* (Emphasis added.)

{¶29} At the hearing held on Campbell's motion to suppress, Salida, Colorado police officer, Jason Gallegos, testified that in July 2008, he was investigating a case of criminal mischief in which someone had written some graffiti on public and private buildings, which included the word "arson." Campbell became a prime suspect in the case. Officer Gallegos drove by a park and saw Campbell sitting with two other individuals. Officer Gallegos approached Campbell and said to him, "I need you to come with me to answer some questions. Would you be willing to answer some questions with me?"

{¶30} When Campbell asked, "Is this about the Hamilton thing?", Officer

Gallegos, who was, in fact, aware of the "Hamilton thing," told him it was not. At that point, Officer Gallegos handcuffed Campbell, placed him in his police cruiser, and drove him to the police station. Upon arrival, Officer Gallegos removed Campbell's handcuffs and advised him of his *Miranda* rights. Prior to advising him of his *Miranda* rights, Officer Gallegos told Campbell "the door is right there," as he showed Campbell the door from which he could exit the police station.

{¶31} After being advised of his *Miranda* rights, Campbell stated he wished to speak to a lawyer. Officer Gallegos then asked Campbell "several times if he was confident of his choice to invoke his rights to counsel." The first time, Campbell answered "Yes." However, the second time, Campbell said, "well, if it is about this incident only in Salida, then I will talk to you." Campbell said this after seeing pictures on Officer Gallegos' computer screen related to the graffiti incident the Salida police were investigating. Campbell admitted he wrote the graffiti in question but insisted it had no meaning, and that the word he had written was "sonar," not "arson."

{¶32} The trial court denied Campbell's motion to suppress any statements he made to Colorado police, after finding that Campbell had not been subjected to custodial interrogation for *Miranda* purposes and Campbell had reinitiated the conversation with Officer Gallegos after invoking his right to counsel. However, both of these determinations are problematic.

{¶33} "To trigger the need to provide *Miranda* rights, an individual must be subjected to a custodial interrogation. [Footnote omitted.] Whether a custodial interrogation has occurred depends on how a reasonable person in the suspect's position would have understood the situation. [Footnote omitted.] "[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." [Footnote omitted.] Determining what

constitutes custody for *Miranda* purposes depends on the facts of each case. [Footnote omitted.] *State v. Neely*, 161 Ohio App.3d 99, 106, 2005-Ohio-2342, ¶26.

{¶34} In this case, Officer Gallegos' testimony contains facts that support the view that the encounter between him and Campbell was a voluntary one, and facts that support the view that their encounter amounted to custodial interrogation thereby triggering the need to issue *Miranda* warnings. As the state itself has acknowledged in its brief, "it is debatable that [Campbell] went to the police station voluntarily and was not actually in custody until after he incriminated himself in the graffiti case[.]"

{¶35} The state contends, however, that the question of whether Campbell was in custody at the Salida police station is moot since Officer Gallegos did, in fact, issue *Miranda* warnings to him. The state acknowledges that after he was advised of his *Miranda* rights, Campbell invoked his right to counsel, but the state contends that Campbell reinitiated the conversation with the police, and therefore, under *Edwards*, Officer Gallegos was permitted to continue interrogating him. The trial court agreed with this position.

{¶36} However, Officer Gallegos' testimony at the suppression hearing does not support a finding that Campbell reinitiated the conversation. Instead, Officer Gallegos' testimony clearly shows that Campbell was responding to the officer's repeated questioning of him as to whether he was sure he wanted to invoke his right to counsel. Once Campbell invoked his right to counsel, police interrogation of him should have stopped. *Edwards*, 451 U.S. at 484-485; *Miranda*, 384 U.S. at 473-474. Since the police did not stop questioning Campbell after he invoked his right to counsel, anything Campbell divulged to Colorado police, arguably, should have been ruled as inadmissible. *Id.*

{¶37} Nevertheless, "[w]here evidence has been improperly admitted in

derogation of a criminal defendant's constitutional rights, the admission is harmless "beyond a reasonable doubt" if the remaining evidence alone comprises "overwhelming" proof of defendant's guilt." *State v. Murphy*, Butler App. No. CA2007-03-073, 2008-Ohio-3382, ¶29, quoting *State v. Williams* (1983), 6 Ohio St.3d 281, 290. As stated in our response to Campbell's second and third assignments of error, the state presented overwhelming evidence of Campbell's guilt on the arson and criminal trespass charges. Moreover, this evidence was independent of any evidence obtained by the Colorado police. Therefore, any error the trial court may have committed in refusing to suppress the Colorado evidence was harmless beyond a reasonable doubt. *Id.*

{¶38} As to Campbell's alternative argument, i.e., the trial court should have found the Colorado evidence to be inadmissible "other acts" evidence under Evid.R. 404(B), any error the trial court may have made in admitting the Colorado evidence over Campbell's "other acts" objection was also harmless in light of the overwhelming evidence presented by the state as to Campbell's guilt. See Crim.R. 52(B) and *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, ¶15.

{¶39} Consequently, Campbell's first assignment of error is overruled.

{¶40} Assignment of Error No. 4:

{¶41} "THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY INSTRUCTING THE JURY ON FLIGHT."

{¶42} Campbell argues the trial court abused its discretion by giving the jurors an improperly worded "flight" instruction. We disagree.

{¶43} Ohio courts have long upheld the issuance of a jury instruction that informs jurors that evidence of an accused's flight, escape from custody, resistance to arrest, concealment, and related conduct tends to indicate an accused's "consciousness of guilt." See, e.g., *State v. Taylor*, 78 Ohio St.3d 15, 1997-Ohio-243. While evidence of

consciousness of guilt is admissible, the decision whether to instruct on this issue rests within the trial court's sound discretion. See *id.* and *State v. Goodbread*, Butler App. No. CA2003-02-038, 2004-Ohio-419, ¶11.

{¶44} The trial court issued the following flight instruction to the jury:

{¶45} "Testimony has been provided by the state indicating that the Defendant attempted to avoid prosecution for these alleged crimes by fleeing from the police.

{¶46} "In regard to this evidence you are instructed that flight from justice, concealment, and related conduct, in and of itself, does not raise a presumption of guilt, but it may tend to show a consciousness of guilt on the part of the Defendant or a guilty connection to the crime.

{¶47} "If you find that the Defendant's conduct was not motivated by consciousness of guilt, or if you are unable to determine what the Defendant's motivation was, you should not consider this evidence for any purpose."

{¶48} This instruction is similar to the one set forth in 4 Ohio Jury Instructions (2005), 43, Section 405.25(1), and is similar to the instructions approved in *Taylor*, 78 Ohio St.3d at 27; and *Goodbread*, 2004-Ohio-419, ¶7-10.

{¶49} The only objection Campbell raised at trial regarding the trial court's proposed flight instruction was the state failed to present sufficient evidence to warrant its issuance. The trial court rejected that argument, and Campbell does not challenge that ruling on appeal. Instead, he now argues, for the first time in these proceedings, that the trial court's flight instruction omitted several key portions of the flight instruction issued by the trial court in *State v. Stepp*, Butler App. No. CA2007-05-117, 2008-Ohio-4305, ¶62-76. Specifically, he asserts the trial court's flight instruction should have informed the jury, as did the flight instruction in *Stepp*, that evidence of flight, "by itself, is by no means strong enough to support a conviction," but may be considered along with

other evidence in determining a defendant's guilt.

{¶150} However, by failing to raise this specific objection to the trial court's flight instruction at trial, as required by Crim.R. 30(A), Campbell has waived all but plain error under Crim.R. 52(B), see *State v. Wright*, Warren App. No. CA2008-03-039, 2008-Ohio-6765, ¶35, and in this case, the trial court did not commit any error, plain or otherwise, in issuing the flight instruction that it provided to the jury at the close of evidence.

{¶151} The trial court's flight instruction was "a correct statement of the law, applicable to the facts in the case, and reasonable minds could reach the conclusion sought by the specific instruction." *State v. Pringle*, Butler App. No. 2008-Ohio-5421, ¶51. Therefore, the trial court did not abuse its discretion by issuing the flight instruction that it provided to the jury in this case. See *id.* at ¶51.

{¶152} Therefore, Campbell's fourth assignment of error is overruled.

{¶153} Assignment of Error No. 5:

{¶154} "THE TRIAL COURT VIOLATED APPELLANT'S RIGHT TO A FAIR TRIAL BY FAILING TO INSTRUCT THE JURY REGARDING HIS NOTICE OF ALIBI."

{¶155} Campbell argues the trial court erred by failing to instruct the jury on his alibi defense. We disagree.

{¶156} "Crim.R. 30(A) requires a trial court to 'fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh the evidence and discharge its duty as the fact-finder.'" *State v. Strunk*, Warren App. No. CA2006-04-045, 2007-Ohio-683, ¶16, citing *State v. Comen* (1990), 50 Ohio St.3d 206, paragraph two of the syllabus. An appellate court must determine whether the record contains evidence from which reasonable minds might reach the conclusion sought by the instruction. *Strunk*, citing *State v. Risner* (1997), 120 Ohio App.3d 571, 574. A trial court does not err in failing to issue a jury instruction where the evidence is insufficient to support

issuance of the instruction. *Strunk*, citing *State v. Melchior* (1978), 56 Ohio St.2d 15, 21-22.

{¶57} The determination as to whether a jury instruction should be given is a matter left to the trial court's sound discretion. *Strunk* at ¶15, citing *State v. Guster* (1981), 66 Ohio St.2d 266, 271. The trial court's decision is reviewed under an abuse of discretion standard and will not be reversed unless it is unreasonable, arbitrary or unconscionable. *Strunk*, citing *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶40.

{¶58} Prior to trial, Campbell filed a notice of alibi stating that "from approximately 11:30pm [sic], on May 6, 2008 to 10:00am [sic], on May 7, 2008, [Campbell] was with homas McClure and Arthur Foster, and the Defendant was primarily at [McClure's] residence [at] 431 North Third Street, Hamilton, Ohio. The Defendant contends that he was not present at 201 Hensel Place, Hamilton, Ohio, when the fire started, at the time of these offenses, and plans to assert such a defense."

{¶59} When the parties discussed the trial court's proposed jury instructions, defense counsel acknowledged that no evidence had been presented to show that Campbell was present at McClure's address until 10:00 a.m. on May 7, 2008. However, defense counsel argued that when Foster's and McClure's testimony was looked at together, there was evidence presented to support a finding that Campbell was not at 201 Hensel Place at the time the fire was started, which Investigator Angst estimated to be at approximately 12:15 a.m. on May 7, 2008. The trial court rejected defense counsel's argument. Campbell now argues on appeal that the trial court erred by doing so. We find this argument unpersuasive.

{¶60} Crim.R. 30(A) provides in pertinent part that "[a]t the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file

written requests that the court instruct the jury on the law as set forth in the requests." (Emphasis added.) Generally, when a defendant fails to request a jury instruction in writing as required by Crim.R. 30(A), a trial court does not err in denying his oral request for such an instruction. See *State v. Mullins*, Montgomery App. No. 21277, 2007-Ohio-1051, ¶19.

{¶61} In this case, Campbell failed to make a proper, written request for an alibi instruction, and therefore, the trial court did not err in refusing to provide Campbell's oral request for such an instruction. *Id.* Moreover, even if Campbell had made a written request for an alibi instruction, he still would not have been entitled to one.

{¶62} Both Foster and McClure testified that Campbell admitted to them that he had set a fire in the vacant apartment building at 201 Hensel Place. Although Foster testified that Campbell had told him he put the fire out by putting a board over it and urinating on it, Foster also testified that Campbell seemed to derive some kind of satisfaction by watching the fire at the apartment building. McClure testified that Campbell had told him that he set the fire and that it was an accident, but Campbell did not call 911 or report the fire to the authorities. McClure described Campbell's demeanor when he talked about the fire as being "Very smug. Smug and nonchalant." McClure also testified that Campbell showed no concern for the welfare of the children who lived near the apartment building he had set on fire.

{¶63} A review of Foster's and McClure's testimony demonstrates that their testimony provided no help to Campbell in establishing his alibi defense, and therefore the trial court did not abuse its discretion in refusing to give Campbell's requested alibi instruction.

{¶64} Therefore, Campbell's fifth assignment of error is overruled.

{¶65} Assignment of Error No. 6:

{¶66} "THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING APPELLANT TO PAY RESTITUTION IN EXCESS OF THE VICTIM'S OUT-OF-POCKET LOSSES."

{¶67} Campbell argues the trial court abused its discretion by ordering him to pay \$100,000 in restitution to Mulligan because the amount awarded is not supported by evidence in the record and does not reflect Mulligan's actual "out-of-pocket" losses since the amount fails to reflect the insurance benefits he received as a result of his loss. We find these arguments unpersuasive.

{¶68} R.C. 2929.18(A)(1) authorizes the sentencing court to order an offender to pay restitution to his victim "in an amount based on the victim's economic loss." "Economic loss' means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes *** any property loss *** incurred as a result of the commission of the offense." R.C. 2929.01(L).

{¶69} The sentencing court "may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or reports indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense." R.C. 2929.18(A)(1).

{¶70} If the sentencing court orders an offender to pay restitution, the court must hold a hearing on restitution if the offender, victim, or survivor disputes the amount. *Id.* Due process requires that the amount of restitution ordered bear a reasonable relationship to the actual loss suffered by the victim. *State v. Williams* (1986), 34 Ohio App.3d 33, 34. The sentencing court's order regarding restitution must be supported by competent, credible evidence in the record. See *State v. Warner* (1990), 55 Ohio St.3d

31, 69.

{¶71} In this case, there is some competent, credible evidence in the record to support the trial court's decision to order Campbell to pay \$100,000 in restitution to Mulligan. Mulligan testified that he purchased the apartment building "in a fairly run-down condition" in 2001 for \$88,000, and from 2001 to 2008, spent \$100,000 to rehabilitate it. The evidence showed that Mulligan received \$80,000 in fire insurance proceeds, which he used to pay off the balance owed on the building's mortgage.

{¶72} By awarding Mulligan \$100,000 in restitution, the trial court was essentially ordering Campbell to pay Mulligan for the money he spent from 2001 to 2008 to rehabilitate the apartment building. Consequently, Mulligan did not receive an unfair windfall as a result of Campbell's crime. Cf. *State v. Martin* (2000), 140 Ohio App.3d 326, 337-338 (where burglary victim was already reimbursed for his economic losses by his insurer, the sentencing court erred by ordering offender to pay restitution to victim rather than victim's insurer). Consequently, the trial court did not abuse its discretion in ordering Campbell to pay Mulligan \$100,000 in restitution.

{¶73} Therefore, Campbell's sixth assignment of error is overruled.

{¶74} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.