

[Cite as *State v. Grimm*, 2015-Ohio-1840.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101889

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ILA M. GRIMM

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-580676-A

BEFORE: Laster Mays, J., Keough, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: May 14, 2015

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Ila M. Grimm (“Grimm”) appeals from the order of restitution the trial court imposed after she pleaded guilty to charges of attempted burglary and theft.

{¶2} Grimm presents a single assignment of error. She argues that the trial court’s order that she pay restitution to the victim in the amount of \$24,045.07 is excessive in light of the evidence presented by the state. This court cannot agree; therefore, the trial court’s order is affirmed.

{¶3} Grimm was charged in this case with one count of burglary and one count of fifth-degree felony theft. The second count contained a furthermore clause that stated that the victim was an elderly person.

{¶4} After several pretrial hearings, Grimm entered into a plea bargain with the state. In exchange for the addition of the attempt statute to the burglary count, Grimm pleaded guilty to both that charge and the theft count. The trial court conducted a thorough colloquy before accepting Grimm’s guilty pleas.

{¶5} When Grimm appeared for sentencing, however, her trial counsel informed the court that he and the prosecutor disagreed concerning the amount of restitution to be paid to the victim. The trial court set the matter for further hearing.

{¶6} When the hearing commenced, the state presented its evidence. Tammy N. States (“States”), “inside property claim representative” for the victim’s insurer, Westfield Insurance Company (“Westfield”), testified that, upon receiving the victim’s

claim of loss due to the crimes, she contacted the victim. States then provided the “personal property inventory form” to her, “which requires a detailed description of the stolen items, the proximate [sic] age of the items” and the victim’s estimate of their value.

After the victim returned the completed form, States forwarded it to “an independent vendor [either] Insurer’s World or Enservio.” The vendor then, based on the descriptions, determined the replacement value for the items.

{¶7} States identified “Exhibit A” as the completed form that the victim submitted. She testified that some of the items the victim included were not “scheduled” items. Items that were not specifically included on the schedule were insured only as “personal property” and covered in an amount only up to \$4,000.

{¶8} States further testified that the victim had a \$250 deductible amount on her policy, and that Westfield paid the victim only the “aggregate limit” on an item, rather than what the independent vendor indicated was the item’s “replacement value.” States indicated that the victim’s loss amounted to \$50,218.53, but Westfield paid only \$26,173.46 on her claim.

{¶9} The trial court then heard from the victim and her husband before asking the prosecutor to set forth the requested restitution amount. The prosecutor indicated that, minus the payment from Westfield, the victim’s total economic loss amounted to \$24,045.07. Over Grimm’s objection, the trial court ordered her to pay restitution to the victim in that amount. The trial court also sentenced Grimm to five years of community

control; Grimm's failure to comply with any conditions would result in concurrent prison terms of twelve months on each count.

{¶10} Grimm appeals from the trial court's restitution order with one assignment of error.

I. The trial court erred in ordering restitution in an amount not established to a reasonable degree of certainty.

{¶11} Grimm argues that the amount of restitution she was ordered to pay is not supported by competent, credible evidence. Her argument is rejected.

{¶12} In *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, the Ohio Supreme Court noted:

R.C. 2929.18(A)(1) authorizes a trial court to impose restitution as part of a sentence in order to *compensate* the victim for economic loss. * * * [The statute] limits the amount of restitution to the amount of the economic detriment suffered by the victim as a *direct and proximate result of the commission of the offense*. * * * [T]he statute allows the court to base the amount of restitution on an amount recommended by the victim or the offender, a presentence investigation report, *estimates or receipts indicating the cost of repairing or replacing property*, and other information * * * .

(Emphasis added.)

{¶13} The standard of review of a trial court's order of restitution is an abuse of discretion. *State v. Milenius*, 8th Dist. Cuyahoga No. 100407, 2014-Ohio-3585, ¶ 10, citing *State v. Marbury*, 104 Ohio App.3d 179, 661 N.E.2d 271 (8th Dist.1995). The term "abuse of discretion" connotes judgment exercised by a court that does not comport with either reason or the record. *Milenius*.

{¶14} The amount of restitution must be supported by competent, credible evidence from which the court can discern the amount of restitution to a reasonable degree of certainty. *State v. Roberts*, 8th Dist. Cuyahoga No. 99755, 2014-Ohio-115, ¶ 7-8; *State v. Gears*, 135 Ohio App.3d 297, 300, 733 N.E.2d 683 (6th Dist.1999). In other words, the evidence in the record must be enough to “substantiate the relationship of the offender’s criminal conduct to the amount of the victim’s loss.” *Roberts* at ¶ 10, citing *State v. Brumback*, 109 Ohio App.3d 65, 83, 671 N.E.2d 1064 (9th Dist.1996). Thus, if the amount ordered is unsupported by competent, credible evidence, then an abuse of discretion occurred. This case does not meet that standard.

{¶15} The evidence demonstrated that as a direct result of Grimm’s attempted burglary and theft, the victim sustained losses of particular pieces of jewelry that she described in detail for Westfield. An independent appraiser reviewed the victim’s descriptions and valued these pieces at \$50,218.53. The evidence demonstrated further that Westfield paid the victim \$26,173.46 on her claim.

{¶16} In calculating the victim’s losses that were incurred as a direct result of Grimm’s actions, therefore, the trial court considered the foregoing evidence in addition to the victim’s statements at sentencing. The court concluded that restitution was the difference between the two dollar amounts, i.e., \$24,045.07. Because the amount ordered bears a reasonable relationship to the losses suffered and is supported by competent and credible evidence in the record, the trial court’s order of restitution did not constitute an abuse of discretion. *Brumback* at 84.

{¶17} Grimm’s assignment of error is overruled.

{¶18} The trial court’s order is affirmed.

It is ordered that appellee recover from appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR