REL: October 8, 2021

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0223

Hunter Halver Brown

v.

State of Alabama

Appeal from Covington Circuit Court
(CC-20-303)

McCOOL, Judge.

Hunter Halver Brown appeals his guilty-plea convictions for first-degree theft of property, a violation of § 13A-8-3, Ala. Code 1975; third-

degree burglary, a violation of § 13A-7-7, Ala. Code 1975; and unlawful breaking and entering a vehicle, a violation of § 13A-8-11 -- all of which stemmed from Brown's theft of John Goolsby's personal property. In addition to sentencing Brown to terms of imprisonment, the circuit court ordered Brown to pay $40,805.35 in restitution to Goolsby and to pay $33,149.29 in restitution to Progressive Insurance Company ("Progressive"), which had paid Goolsby the proceeds of a policy that insured some of Goolsby's stolen property.

Facts and Procedural History

In December 2019, a Covington County grand jury indicted Brown for the offenses to which he ultimately pleaded guilty. The parties concede that, at that time, Brown was on probation in Florida and that "new charges were brought against [him] in Florida for crimes related to the instant offense[s]." (C. 153.) Specifically, some of Goolsby's stolen property was recovered in Florida. It appears that Brown's probation was revoked based on the new charges filed against him in Florida and that, while he was incarcerated in Florida, "Covington County filed detainer

warrants against him for the Covington County charges." (Brown's brief, p. 1.)

On April 30, 2020, in accordance with the Uniform Mandatory Disposition of Detainers Act ("UMDDA"), § 15-9-80 et seq., Ala. Code 1975, Brown served the Covington County district attorney with a request that he be extradited to Alabama for disposition of the charges filed against him in that county.[1] It appears that, on or around August 6, 2020, the Covington County Sheriff's Department received Brown into its custody, where Brown awaited the disposition of his charges. Later that month, Brown entered a plea of not guilty, even though, according to the State, "an agreed upon settlement had been reached."[2] (C. 154.) Consistent with the State's contention, it appears that Brown was scheduled to enter a guilty plea on September 2, 2020 (C. 166), but, according to the State, Brown "decided he wanted documentation of the proposed restitution amount, along with time to 'think about it,' " and

[1]Brown's request is dated March 27, 2020, but it is undisputed that service was not perfected until April 30, 2020.

[2]According to the State, such practice is "the custom" in Covington County. (C. 154.)

Brown was provided with "restitution documentation" and was rescheduled to plead guilty on September 25, 2020. (C. 155.) However, according to the State, on the day he was scheduled to plead guilty, Brown indicated that he "was no longer interested in any plea." (C. 155.)

On November 4, 2020, the State filed a motion to set Brown's case for trial, noting that, "due to time constraints under the [UMDDA], this matter should be set as soon as possible." (C. 45.) The circuit court granted that motion but did not indicate when the case would be scheduled for trial. (C. 47.)

On November 30, 2020, Brown filed a motion to dismiss the indictment, alleging that the State had violated the UMDDA by failing to bring him to trial within 180 days of being served with his request for disposition of his charges. According to Brown, given that the State had been served with that request on April 30, 2020, the 180-day time limit had expired on October 27, 2020. In response, the State argued that the time for bringing Brown to trial had been tolled by the Alabama Supreme Court's orders suspending jury trials from March 13, 2020, to September 14, 2020, as a result of the COVID-19 pandemic. The State also argued

that Brown had engaged in "delay tactics" (C. 157) by wavering on his desire to plead guilty and by retaining new counsel five days before jury trials were scheduled to begin in Covington County on October 19, 2020.

On December 1, 2020, the circuit court held a hearing on Brown's motion to dismiss and, following the hearing, issued an order denying Brown's motion. That order states, in pertinent part:

> "[T]his Court finds that any delay in disposing of [Brown's] case prior to the expiration of the 180-day time limit was reasonable and, in fact, necessary. This Court finds particularly compelling that, at the time [Brown] made his request for disposition, the Alabama Supreme Court had already suspended in-person court proceedings due to COVID-19. Further, the Supreme Court's eventual expanded suspension of jury trials through September 14, 2020, left the parties unable to dispose of [Brown's] case at least until that time. This delay is not at all attributable to the State of Alabama and is not imputed to it in calculating [Brown's] time for disposition. The Court finds that, in light of COVID-19 and the resulting suspension of jury trials, and other interruptions to normal business caused by COVID-19, the time to bring [Brown] to trial was tolled, and has not yet expired."

(C. 223.) The following day, Brown pleaded guilty to the charges in the indictment but reserved his right to appeal the denial of his motion to dismiss.

Approximately one week later, the circuit court held a restitution hearing at which Goolsby testified that Progressive had paid him $33,149.29 in insurance proceeds for the loss of some of his stolen property. In addition, Goolsby testified that the value of the stolen property that was not covered by those proceeds totaled $40,805.35. The State also presented, over Brown's objection, detailed business records from Progressive that reflect how Progressive calculated the insurance proceeds it had paid to Goolsby. At the conclusion of the hearing, Brown argued that he should not be required to pay restitution to Progressive because, he said, the State had not provided "the proper evidentiary predicate for [the] values that [Progressive had] paid out." (R. 105.) In support of that claim, Brown noted that no representative from Progressive had testified at the hearing as to "how [Progressive] went about establishing their values" of Goolsby's property (R. 106), and Brown argued that the Progressive business records were inadmissible hearsay that could not be relied upon "to establish what Progressive is due to be paid back." (R. 107.) The circuit court did not address Brown's arguments at the hearing, and, following the hearing, the court issued a detailed

restitution order in which the court ordered Brown to pay Goolsby $40,805.35 in restitution and to pay Progressive $33,149.29 in restitution. Brown filed a timely notice of appeal.

Discussion

On appeal, Brown challenges both the circuit court's denial of his motion to dismiss the indictment and the circuit court's order of restitution to Progressive. We address each claim in turn.

I.

Brown argues that the trial court erred by denying his motion to dismiss the indictment because, he says, the State failed to comply with the UMDDA by failing to bring him to trial within 180 days of being served with his request for disposition of his charges.

The UMDDA states, in pertinent part:

> "Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of

> the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance."

§ 15-9-81, Article III.(a), Ala. Code 1975.

> "If ... an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III ... hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect."

§ 15-9-81, Article V.(c).

> "In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter."

§ 15-9-81, Article VI.(a) (emphasis added).

As evidenced by the foregoing, the UMDDA's 180-day time limit in which a defendant must be brought to trial is not absolute. Rather, the 180-day time limit shall be tolled if the prisoner is "unable to stand trial." § 15-9-81, Article VI.(a). Here, the circuit court correctly noted that, by

order of the Alabama Supreme Court, jury trials in Alabama had been suspended at the time Brown filed his request for disposition of his charges and remained suspended until September 14, 2020. Thus, because Brown was "unable to stand trial" during that time, the 180-day time limit was tolled and did not begin to run until jury trials resumed on September 14, 2020, which means that the 180-day time limit did not expire until March 15, 2021, well after Brown pleaded guilty. Accordingly, Brown is not entitled to relief on this claim.

II.

Brown argues that the circuit court erred by ordering him to pay restitution to Progressive because, he says, there was not sufficient evidence to support such an order. The sole authority Brown cites in support of that claim is Henry v. State, 468 So. 2d 896 (Ala. Crim. App. 1984).

In Henry, Joseph Clyde Henry argued that the trial court erred by ordering him to pay $2,356 in restitution for property he had stolen. At trial, Henry's victim testified that the value of the stolen property was "just a little under $3,000," and, at the sentencing hearing, a

representative of the Auburn Police Department presented the trial court with a "Restitution Form" that "itemized the victim's losses and valued them at $2,356." Henry, 468 So. 2d at 901. Over Henry's objection, the trial court based its restitution order on the amount documented on the "Restitution Form." Id.

On appeal, this Court held that Henry was entitled to a hearing "at which legal evidence was introduced, in order to determine the precise amount of restitution due the victim." Henry, 468 So. 2d at 901. Thus, the Court remanded the case for the trial court to hold such a hearing, and the Court noted that, "[a]lthough the victim need not produce the actual sales receipts for the property stolen, there should be some evidence as to how the value was determined." Id. at 902 (emphasis added).

We find Henry to be distinguishable from this case. First, Henry does not expressly speak to the specific issue in this case, which is whether an order of restitution to an insurance company must be supported by anything more than evidence establishing the amount of insurance proceeds the company paid its insured. Furthermore, the issue in Henry was that the trial court had not been presented with any

evidence from the victim that demonstrated how the value of the victim's stolen property had been determined. In this case, however, the State presented detailed business records from Progressive which (1) indicate that Progressive had valued the individual items of Goolsby's property by determining their replacement costs and (2) indicate that the $33,149.29 Progressive paid Goolsby was equal to the sum of those replacement costs, subject to the policy limits. (C. 262-76.) Those records provided the circuit court with "some evidence as to how the value [of Goolsby's insured property] was determined," Henry, 468 So. 2d at 902, and, in turn provided the court with a sufficient evidentiary basis for determining the amount of restitution due to Progressive. See People v. Lavilla, 87 A.D.3d 1369, 1370 (N.Y. App. Div. 2011) (holding that "the amount of restitution [due to the victim's insurance company] was supported by the business records of the victim's insurance company"). Although Brown appears to suggest that the State was required to present some evidence as to how Progressive calculated the replacement costs, he cites no authority in support of that argument, and Henry does not go that far.

We also note that Brown has abandoned any claim that the Progressive business records were inadmissible hearsay because he has not pursued that claim on appeal. See Bryant v. State, 181 So. 3d 1087, 1138 (Ala. Crim. App. 2011) ("[A]llegations ... not expressly argued on ... appeal ... are deemed by us to be abandoned." (citations omitted)). We acknowledge that Brown cursorily implies that those records were inadmissible by arguing that "no admissible evidence was offered by the State regarding the manner in which [Progressive's] restitution amount was determined." (Brown's brief, p. 16.) However, Brown makes no attempt whatsoever to demonstrate that the records were hearsay or that they were inadmissible on any other grounds (id. at 16-17), and this Court will not make and address that argument for him. See Marshall v. State, 182 So. 3d 573, 620 (Ala. Crim. App. 2014) (noting that "[i]t is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument" (citations omitted)).

Based on the foregoing, we find no abuse of discretion in the circuit court's restitution order. See King v. State, [Ms. CR-19-0249, March 12,

2021] ___ So. 3d ___, ___ (Ala. Crim. App. 2021) (noting that "[t]he particular amount of restitution is a matter which must of necessity be left almost totally to the discretion of the trial judge" and "should not be overturned except in cases of clear and flagrant abuse' " (citations omitted)).

Conclusion

For the foregoing reasons, the judgment of the circuit court is affirmed.

AFFIRMED.

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.