

REL: October 8, 2021

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-20-0202

Terri Lynn Davis

v.

State of Alabama

Appeal from St. Clair Circuit Court
(CC-19-233)

McCOOL, Judge.

Terri Lynn Davis appeals the St. Clair Circuit Court's order of restitution in the amount of \$3,160. The restitution was ordered after

CR-20-0202

Davis pleaded guilty to second-degree criminal trespass, a violation of § 13A-7-3, Ala. Code 1975.

On August 15, 2019, Davis was indicted for one count of third-degree burglary, a violation of § 13A-7-7(a)(1), Ala. Code 1975. On or about September 21, 2020, Davis pleaded guilty to second-degree criminal trespass, and she was sentenced to 90 days in jail. Davis's sentence was suspended, and she was ordered to serve 24 months' probation. A hearing was set to address the issue of restitution.

A restitution hearing was held on November 10, 2020. At the hearing, Laurie Walker, the victim, testified that she was in the process of moving out of her house. Walker claimed that, although she was not living in the house at the time, she would return to the house daily. After approximately one month of not living in the house, Walker noticed several items missing, including a television, two dirt bikes, a new pair of shoes, and antique dishes. She testified that the television was valued at \$1,700, the dirt bikes were valued at \$250 each, the shoes were valued at \$250, and the dishes were valued at \$950. However, Walker testified that one of the dirt bikes was later recovered. On cross-examination, Walker

CR-20-0202

admitted that she did not know who had taken the items and that she did not witness Davis taking her stuff, but she claimed that Davis had been seen by a neighbor leaving Walker's house. Walker also stated that, although she visited her house each day, she did not stay there all day. Walker was unaware whether any of the items had been recovered from Davis's property or her possession.

Additionally, Davis testified at the restitution hearing. Davis admitted that she lived six houses down from Walker and that she had gone to Walker's property to look for her dogs that were missing; however, Davis denied entering Walker's house. Davis testified that there was "six months worth of trash in the back yard strewn," and that "the back doors [of Walker's home] were open." (R. 9.) Davis testified that when law-enforcement officers came to her home, she told them that she had gone to Walker's property; however, she maintained that she did not take any of Walker's personal property. Davis testified that some time after she had been arrested on the charges underlying this case, she helped law-enforcement officers recover one of the dirt bikes because one day she had observed "something that looked odd" in the ditch and she called the

CR-20-0202

police. (R. 11.) Davis stated that she pleaded guilty to being on the property without Walker's permission, but that she did not plead guilty to taking anything from Walker's residence.

That same day, on November 10, 2020, the circuit court issued a written order taxing Davis with the restitution amount of \$3,160. This appeal followed.

On appeal, Davis argues that the circuit court erroneously awarded restitution because there was insufficient evidence to "demonstrate any causal relationship between the crime committed and the claimed damages suffered by the complaining witness." (Davis's brief, at 2.) Specifically, Davis contends that, "[b]ecause the State did not prove that [Davis's] trespass or any other conduct admitted by [Davis] proximately caused the removal and loss of any personal property from the residence of the complaining witness, the lower court erred in awarding any restitution, thus mandating reversal." (Davis's brief, at 5.)

In Heupel v. State, 113 So. 3d 695, 699 (Ala. Crim. App. 2012), this Court explained:

"It is well established that a defendant can be required to pay restitution only if one of two conditions exists.

"'[U]nder Alabama's restitution statute, the defendant could be ordered to pay restitution to the victim of his crime only if one of two conditions existed: (1) his victim suffered direct or indirect pecuniary loss as a result of the criminal activity of which the defendant has been convicted, or (2) he admitted to other criminal conduct during the proceedings that was the proximate cause of the victim's pecuniary loss or damages.'

"B.M.J. v. State, 952 So. 2d 1174, 1176 (Ala. Crim. App. 2006). See also Lamar v. State, 803 So. 2d 576 (Ala. Crim. App. 2001). Furthermore, as this Court stated in Grace v. State, 899 So. 2d 302, 308 (Ala. Crim. App. 2004), in addressing Alabama's restitution statute:

"'"[I]t is well established that criminal statutes should not be 'extended by construction.'" Ex parte Evers, 434 So. 2d 813, 817 (Ala. 1983). "'[C]riminal statutes must be strictly construed, to avoid ensnaring behavior that is not clearly proscribed.'" United States v. Bridges, 493 F.2d 918, 922 (5th Cir. 1974).'Carroll [v. State], 599 So. 2d [1253] at 1264 [(Ala. Crim. App. 1992)]."' "

"In Strough v. State, 501 So. 2d 488, 491 (Ala. Crim. App. 1986), this Court stated that '[b]efore a defendant can be held liable for damages, it must be established that his criminal act was the proximate cause of the injury sustained by the victim.' "

Additionally, this Court addressed a similar situation in Best v. State, 895 So. 2d 1050 (Ala. Crim. App. 2004). In Best, the defendant had been convicted of receiving stolen property, specifically: a truck that belonged to the victim, Peter Garrick. Although the evidence indicated that Garrick's truck had been returned to him undamaged, Best was ordered to pay \$3,300 in restitution for the value of personal property that was missing from inside the truck when the truck was returned to Garrick. In determining whether the trial court's order of restitution was proper in Best, this Court stated:

"In Brothers v. State, 531 So. 2d 317, 318-19 (Ala. Crim. App. 1988), this Court stated:

"The appellant was indicted for burglary in the third degree, theft of property in the first degree, and arson in the second degree. He pleaded guilty to burglary in the third degree and theft of property in the first degree, with the arson charge being continued under the condition that the charge would be dismissed if the appellant pleaded guilty to the other offenses and did not appeal. The appellant was sentenced to life imprisonment pursuant to the Habitual Felony Offender Act and was ordered to pay restitution for the full replacement value of the house and its contents which were destroyed in the fire resulting from the arson.

" I

" "The appellant alleges that the trial court erred in ordering him to pay restitution for damage to the property caused by arson when he was not convicted of arson and did not admit that his criminal activity resulted in the damage which was caused by the arson....

" "...."

" "The State argues that the damage caused by the arson was an "indirect result" of the appellant's criminal activity.

" '....

" "The appellant did not admit committing arson, nor was he convicted of committing arson. This case is distinguishable from Ex parte Clare, 456 So. 2d 357 (Ala.1984). The appellant in Clare was ordered to pay restitution for monies embezzled in an amount greater than that involved in the indictment. However, she admitted embezzling monies which rightfully belonged to her employer and was convicted of embezzling.

" "The burning of the victim's house was not an indirect result of the theft or burglary under § 13A-2-5, Code of Alabama (1975)....

" '....

" "Clearly the appellant's acts of breaking and entering and committing theft were not the cause

of the burning of the victim's house; rather, the act of committing arson was the cause. The burning of the house would not have been within the contemplation of the appellant in committing burglary or theft. Therefore, the trial court erred in ordering the appellant to pay restitution for the property damaged by the arson.'

"In Lamar v. State, 803 So. 2d 576 (Ala. Crim. App. 2001), this Court reversed the trial court's restitution award of \$25,000 to Rosalyn Sellers and her son for injuries they had sustained in an automobile accident. Lamar had entered a guilty plea to the offense of leaving the scene of an accident, a violation of § 32-10-1, Ala. Code 1975, and he argued on appeal that 'the circuit court improperly ordered him to pay restitution because, he argue[d], the injuries the victims sustained were not "proximately caused" by his leaving the scene.' Lamar, 803 So. 2d at 577. In our opinion reversing the trial court's restitution award, this Court stated:

"The term "criminal activities" is defined in § 15-18-66, Ala. Code 1975, as "[a]ny offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant." "However, before there can be any recovery, the criminal activity must be the proximate cause of the pecuniary loss, damage, or injury." Moore v. State, 706 So. 2d 265, 267 (Ala. Crim. App. 1996). Therefore, under Alabama's restitution statute, Lamar could be ordered to pay restitution to the victims of his crime only if one of two conditions existed: (1) his victims suffered any direct or indirect pecuniary losses as a result of the activity for which he has been convicted or, (2) Lamar admitted to other criminal conduct during these

proceedings that was the proximate cause of any injuries to the victims.

" '....

" '... The crime of "leaving the scene" does not require that the defendant cause the accident; it requires only that he be involved in the accident.... The trial court could order Lamar to pay restitution only for the pecuniary losses his victims sustained as a result of the offense to which he pleaded guilty.... Lamar's plea of guilty to the offense defined in §§ 32-10-1 and 32-10-2 did not result in a conviction for causing the accident that resulted in the injuries to Sellers and her son, and, therefore, his guilty plea could not authorize the trial court to sentence him to pay restitution for injuries sustained as a result of the accident. See Day v. State, 557 So. 2d 1318, 1319 (Ala. Crim. App. 1989) (holding that an order of restitution is inappropriate for injuries the victim suffers as a result of "conduct that was not the subject of the defendant's prosecution and for which a subsequent prosecution would be necessary").

" "The trial court could also have ordered Lamar to pay restitution for 'any other criminal conduct' he admitted during these proceedings that was the proximate cause of the victims' injuries. See § 15-18-66. However, at no point during the plea colloquy, the sentencing hearing, or the restitution hearing did Lamar ever admit to having caused the accident resulting in the victims' injuries. Although evidence was presented during both the sentencing and restitution hearings that

Lamar had caused the accident because he was speeding and he struck a turning vehicle, Lamar himself never made such an admission. Under the plain language of § 15-18-66, restitution can be ordered only for 'other criminal conduct' that is admitted by the defendant. This court has previously held that an admission, as defined in § 15-18-66, requires "a judicial admission sufficient to support a conviction before restitution can be ordered." Day v. State, supra, at 1319. Therefore, the trial court had no statutory authorization to order Lamar to pay restitution to Sellers and her son for the injuries they sustained during the accident, because Lamar never admitted any conduct that could be said to be the proximate cause of their injuries.'

"Lamar, 803 So. 2d at 577-79 (footnote omitted).

"In the present case, Best was convicted of receiving stolen property, i.e., Garrick's 1988 Dodge pickup truck. There were no allegations or proof that Best ever had possession of Garrick's personal property. In fact, as previously noted, Garrick admitted at the sentencing hearing that he 'really [didn't] know if Mr. Best ever had those items' in his possession. (R. 181.) At the sentencing hearing, Best stated that '[t]he truck was given to [him] for drugs ... [that he] gave [Garrick's] wife drugs to use the truck' and that 'on this date, February the 7th, [he] gave her some crack cocaine for the truck.' (R. 186-87.)"

895 So. 2d at 1054-56. Thus, this Court held that, the trial court improperly ordered Best to pay restitution to Garrick in the amount of

CR-20-0202

\$3,300 for his missing personal property and, consequently, it reversed the judgment and remanded the case for the circuit court to amend its judgment. Id., at 1056.

In the present case, Davis pleaded guilty to second-degree criminal trespass. Section 13A-7-3, Ala. Code 1975, provides that "[a] person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in a building or upon real property which is fenced or enclosed in a manner designed to exclude intruders." The State contends in its brief that the victim in this case, Walker, testified that Davis took property from her home and that, although "Davis denied taking anything from the victim's property, she admitted that she 'helped' law enforcement recover one of the dirt bikes that the victim testified had been stolen from her property," and, thus, that it could be inferred that Davis helped law enforcement find the property because she possessed the property herself. (State's brief, at 8.) We disagree.

At the hearing, the prosecutor asked Walker to confirm that she had "had some things that were allegedly taken by [Davis,]" and Walker responded, "Yes, ma'am," before she proceeded to detail the items that had

CR-20-0202

been taken from her home. (R. 3.) Contrary to the State's assertion, Walker admitted at the hearing that she did not know who took her stuff, and she merely testified that her neighbor had seen Davis leaving her house. Importantly, Walker never testified that Davis was seen leaving Walker's house with any of the missing property. In fact, no evidence was presented to indicate that Davis had ever had or been seen with any of Walker's missing possessions. At the hearing, Davis admitted that she went onto Walker's property and that she had pleaded guilty to second-degree criminal trespass. However, the conduct Davis admitted and pleaded guilty to – "knowingly enter[ing] or remain[ing] unlawfully in a building or upon real property which is fenced or enclosed in a manner designed to exclude intruders" – does not, alone, indicate that Walker's pecuniary loss of the missing belongings from her house was proximately caused by Davis's criminal conduct.

Based on the foregoing, the circuit court improperly ordered Davis to pay restitution to Walker in the amount of \$3,160 for her missing property. Consequently, the circuit court's restitution award is reversed

CR-20-0202

and the cause is remanded for the circuit court to amend its judgment accordingly. Due return shall be made within 28 days of this opinion.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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