

RENDERED: DECEMBER 12, 2008; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2007-CA-002340-MR

SANDY HILL

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 06-CR-00260

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: FORMTEXT COMBS, CHIEF JUDGE; DIXON AND TAYLOR,  
JUDGES.

TAYLOR, JUDGE: Sandy Hill brings this appeal from an October 19, 2007,  
Order of the Calloway Circuit Court requiring her to pay restitution in the amount  
of \$8,410. We affirm.

On December 11, 2006, Hill was indicted by a Calloway County Grand Jury of third-degree burglary. In the indictment, it was alleged that Hill knowingly entered and unlawfully remained in a storage unit rented by Angela Jackson with the intent to commit the crime of theft by deception over \$300. Hill subsequently pleaded guilty and was granted pretrial diversion. Without benefit of an evidentiary hearing, the circuit court entered an order on August 17, 2007, directing Hill to pay \$8,410 in restitution. Hill then filed a motion to amend, vacate or set aside the restitution order and a motion for an evidentiary hearing. The court granted Hill's motions, set aside the order of restitution, and scheduled the matter for an evidentiary hearing.

The circuit court conducted an evidentiary hearing. The Commonwealth called the victim, Angela Jackson, to testify. Jackson testified as to the value of each item taken from her storage unit. Jackson further testified that she arrived at the values based upon the amount she paid for the item or the amount to replace the item. After the Commonwealth questioned Jackson, Hill's trial counsel cross-examined Jackson regarding the values. During cross-examination, the court interrupted Hill's trial counsel and asked whether he intended to continue with the same line of questioning or whether he intended to call any witnesses to controvert Jackson's testimony regarding value. Trial counsel never indicated that he planned to call any witnesses. Rather, trial counsel responded that he intended to show the values Jackson assigned to the items where "broad guesstimates." The court then stated it was "not going to get into

nitpicking” the values supplied by Jackson. The court terminated the hearing. By order entered October 19, 2007, the circuit court “reinstated” the original restitution order of August 17, 2007. This appeal follows.

Hill contends the circuit court violated her constitutional right to due process by ordering restitution without a full evidentiary hearing. Specifically, Hill contends that the circuit court erroneously terminated the hearing during cross-examination of Jackson. In particular, Hill claims she “was entitled to a hearing and a chance to present evidence in her own behalf.”

It is well-established that the constitutional right of due process mandates that a defendant be “afforded a meaningful opportunity to controvert the evidence against him” at a restitution hearing. *Fields v. Com.*, 123 S.W.3d 914, 917 (Ky.App. 2003)(quoting *Com. v. Jeffries*, 95 S.W.3d 60, 62 (Ky. 2002)). Generally, a defendant is afforded a meaningful opportunity to controvert the evidence if he is allowed to “introduce countervailing evidence.” *Id.* at 917.

In this case, the circuit court clearly questioned Hill’s trial counsel regarding whether he intended to introduce countervailing evidence as to the value of the stolen items, and trial counsel never answered in the affirmative. In fact, the circuit court specifically asked trial counsel whether he intended to “put on any evidence.” Trial counsel responded that he only intended to show Jackson’s values were “broad guesstimates.” Moreover, in her brief, Hill does not specify what evidence she intended to introduce but merely states that she was denied the right to present evidence. While we certainly recognize the right of every defendant to

present countervailing evidence at a restitution hearing, it is axiomatic that such right is only infringed when a defendant intended to introduce such evidence and was prevented from so doing by the circuit court. Considering the unique facts of this case, we conclude that Hill's due process rights were not violated.

For the foregoing reasons, the Order of the Calloway Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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