

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000016-MR

MICHAEL A. JACKSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 16-CR-00501

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND D. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: Michael A. Jackson appeals the judgment of the Fayette Circuit Court, which imposed restitution to be paid in the amount of \$1,833.58 as part of his sentence. He contends that the restitution amount set by the trial court lacked adequate evidentiary support. Having reviewed the record, we affirm the trial court's imposition of restitution in that amount which was supported by substantial evidence.

I. FACTUAL AND PROCEDURAL HISTORY

Jackson and Sandra Brooks had been involved in a romantic relationship for approximately eight months leading up to July 21, 2008. Prior to that night, the couple had lived together, and Brooks allowed Jackson free access to all four of her automobiles. On that night, however, Jackson arrived home in Brooks' Lincoln automobile to find that Brooks had gathered his belongings and demanded that he leave. Jackson went into the residence and retrieved the keys to the Brooks' Cadillac. However, the Cadillac was blocked in the driveway by the Lincoln that Jackson had been driving when he arrived. Brooks made efforts to stop Jackson from leaving in it, testifying that they "wrestled for the keys, but he got them."

Jackson had to alternate driving in reverse and forward, maneuvering the Cadillac back and forth, to clear the Lincoln. Ultimately, he drove across the neighbor's yard to get away. While maneuvering the car out of the driveway, Jackson struck a post supporting Brooks' carport with the rear of the car several times, detaching it from its concrete base, and damaging the Cadillac.

Jackson made his way to Oklahoma where he was arrested the next day pursuant to outstanding warrants from California. Oklahoma authorities notified Brooks that the Cadillac had been impounded there. Brooks later testified that she paid an impound fee of \$222.39 to get the vehicle released, and another \$1050.00 to have the vehicle shipped back to her home in Kentucky, which

included a \$250.00 fee that was mandated by the shipper to insure the vehicle in transit.

Jackson served out his sentence in California before returning to face the charges in Kentucky in 2016. He entered into a plea agreement admitting guilt to criminal mischief in the 3rd degree, which also included an agreement to make restitution, that would be set at a later hearing.

At the restitution hearing, Brooks testified that she had paid out a total of \$1,272.39 just to get the Cadillac back to Kentucky, though \$250 of that was for the insurance for the transit. The Commonwealth introduced documentation for the impound fee, which reflected payment in full by credit card, and the invoice from the shipping company, also reflecting payment in full. She testified that once the vehicle arrived, it needed repair work. The Commonwealth introduced an estimate reflecting \$811.19 in repairs, of which \$436.00 went to the cost of replacing a window regulator. Brooks testified the window functioned properly prior to Jackson taking the Cadillac and did not function upon its return.

The estimate, generated before the work was performed, reflected payment in full by insurance, and no payment by Brooks. However, she testified that after learning the amount of the repair bill, she paid it out-of-pocket rather than going through her insurance carrier, as the total repair bill was less than her policy's deductible. She further testified that she had documentation of paying the repair bill herself but had misplaced it in the eight years between making the payment and the hearing.

Brooks also testified that she had not yet repaired the damage to her carport inflicted by Jackson in 2008. The Commonwealth introduced the police report into evidence assessing the damage at \$400. Brooks testified that estimate came from the officer working the scene.

Jackson argued that he was the actual owner of the Cadillac, and, for that reason, owed nothing to Brooks for the damaged vehicle. Brooks directly refuted that assertion in her testimony. To dispute Brooks' testimony as well as the vehicle title records in the Fayette County Clerk's Office, Jackson offered an affidavit from his sister containing the double hearsay statement that Jackson had told her that Brooks bought the car for him as a birthday present.

Alternatively, Jackson argued that the repair bill was inflated in that it included repairs to the window that were not causally related to his offense.

Though Brooks claimed a total of approximately \$2,483 through her testimony, the trial court ultimately imposed restitution in the amount of \$1,833.58. The trial court disallowed the cost of insuring the Cadillac in transit from Oklahoma and the estimated price for the unrepaired damage to Brooks' home. It is from that order that Jackson now appeals.

II. ANALYSIS

The Commonwealth bears the burden of proving both the validity and the proper amount of a victim's claims for restitution. *Jones v. Commonwealth*, 382 S.W.3d 22, 32 (Ky. 2011). The standard of proof the Commonwealth must meet is the preponderance of the evidence. *Id.*

Appellate courts review a trial court's rulings relating to the amount of restitution using an abuse of discretion standard. *See Fields v. Commonwealth*, 123 S.W.3d 914 (Ky. App. 2003). The trial court's findings of fact must reflect clear error to justify disruption on appeal. *Commonwealth v. Abukar*, 497 S.W.3d 231 (Ky. 2016) (citing *Commonwealth v. Deloney*, 20 S.W.3d 471 (Ky. 2000)). Factual findings are clearly erroneous when they lack support from substantial evidence. *Id.* “[S]ubstantial evidence is evidence that a reasonable mind would accept as adequate to support a conclusion[.]” *CertainTeed Corp. v. Dexter*, 330 S.W.3d 64, 72 (Ky. 2010) (internal citations and quotations omitted).

Jackson argues that the trial court erred in imposing an improper amount of restitution, because the evidence lacked “some minimal indicium of reliability beyond mere allegation[.]” *Fields*, 123 S.W.3d at 917 (quoting *U.S. v. Silverman*, 976 F.2d 1504 (6th Cir. 1992)).

Fields concerned a list of items stolen by the defendant, which never made it into the record, and for which the victims merely alleged a certain value. *Fields* had no meaningful opportunity to challenge the valuation prior to the imposition of \$140,000.00 in restitution. The trial court simply took the victims at their word as to value—word which was not given under oath or subject to cross-examination. This Court held that the imposition of restitution, where “no item allegedly stolen has been specified, and there is no indication of how any item was valued” was an abuse of discretion, because the valuation “fail[ed] to satisfy even the Constitution’s minimal reliability standard.” *Id.*

Such reliability issues do not present themselves here. Brooks provided both documentary evidence and sworn testimony, subject to cross-examination. The trial court carefully analyzed the Commonwealth's evidence, even disallowing two of Brooks' claims. The trial court simply believed the Commonwealth's evidence more than Jackson's evidence. Such is the role of the trial court when it sits as a fact-finder, and we have no basis to disrupt those findings.

III. CONCLUSION

Substantial evidence exists in the record which supports the trial court's findings, and for that reason we may not disturb those findings. The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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