

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CYRIL L. CLIFTON,

Defendant-Appellant.

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UNPUBLISHED

November 12, 1999

No. 214511

Recorder's Court

LC No. 96-005586

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted an order requiring him to pay restitution in the amount of \$8,909.50. We vacate and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded guilty to receiving or concealing stolen property over \$100, MCL 750.535; MSA 28.803, and habitual offender, second offense, MCL 769.10; MSA 28.1082. In establishing a factual basis for the offense of receiving or concealing stolen property, defendant admitted that he took a tire off a car which he knew to be stolen. The court sentenced defendant as an habitual offender to four years' probation, with the first year in jail, and ordered him to pay \$12,500 in restitution. Defendant has since been returned to prison for probation violation.

Defendant moved for resentencing on the ground that the restitution figure of \$12,500 represented the investigating officer's estimate of the value of the car, and had not been shown to be the complainant's actual loss. At an evidentiary hearing a representative of the probation department testified that he had spoken with the son-in-law of the complainant, who had stated that the complainant had had a \$100 deductible and was pleased with an insurance payout of \$10,121.50. The court ordered defendant to pay restitution in the amount of \$2,221.50. When plaintiff indicated that the insurance company figure of \$10,221.50 was the total value of the car, the court ordered a report on the "blue book" value of the car. The probation department determined that the insurance company paid the complainant \$10,121.50 and obtained \$1,212.00 in salvage for the car, for a difference of \$8,909.50. The trial court ordered defendant to pay \$8,909.50 in restitution.

Restitution is designed to allow crime victims to recoup losses suffered as a result of criminal conduct. *People v Grant*, 455 Mich 221, 230; 565 NW2d 389 (1997). The burden of establishing the amount of loss sustained by the victim is on the prosecution. MCL 780.767(4); MSA 28.1287(767)(4).

We vacate the trial court order requiring defendant to pay restitution in the amount of \$8,909.50, and remand for further proceedings. The trial court did not abuse its discretion by admitting hearsay evidence at the evidentiary hearing. The Michigan Rules of Evidence do not apply to sentencing hearings. MRE 1101(b)(3). The evidentiary hearing was held to determine the proper amount of restitution, payment of which was a part of defendant's sentence. Nevertheless, we hold that the trial court abused its discretion by requiring defendant to pay restitution in an amount representing the salvage value of the entire car. Restitution may be ordered for damages that arose during a defendant's course of conduct. MCL 780.766(2); MSA 28.1287(766)(2); *People v Gahan*, 456 Mich 264, 272-273; 571 NW2d 503 (1997). Defendant was charged with receiving or concealing stolen property over \$100, i.e., the car. However, the basis of defendant's plea to that charge was that he removed a tire from the car, which he knew to be stolen. The evidence produced at the evidentiary hearing established that the car was stolen on June 29, 1996. Defendant was apprehended on July 2, 1996, as he removed a tire from the car. The instant case is distinguishable from course of conduct cases such as *People v Persails*, 192 Mich App 380; 481 NW2d 747 (1991), in which the defendant was ordered to make restitution for acts covered by charges dismissed as a result of a plea bargain. The instant case is also distinguishable from *People v Gallagher*, 55 Mich App 613; 223 NW2d 92 (1974), in which the defendant was ordered to pay restitution in the amount of the value of an entire automobile, notwithstanding the fact that he had been found in possession of only a part thereof. The defendant in *Gallagher, supra*, operated an auto repair shop. Both direct and circumstantial evidence indicated that the entire automobile had been in the defendant's possession after it was stolen the previous day. *Id.*, 615-616. Here, no evidence linked defendant to the theft of the car. Under these circumstances, it was an abuse of discretion to order defendant to pay restitution in the amount of the entire salvage value of the car when no evidence established that the theft of the car was a part of defendant's course of conduct.

We vacate the trial court's order requiring defendant to pay restitution in the amount of \$8,909.50, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Roman S. Gribbs

/s/ Helene N. White