

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	CASE NO. 2020-G-0249
- vs -	:	
AUGUSTUS M. CIRESI,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Case No. 2019 C 000038.

Judgment: Modified and affirmed as modified.

James R. Flaiz, Geauga County Prosecutor, and *Jacqueline M. O'Donnell*, Assistant Prosecuting Attorney, Courthouse Annex, 231 Main Street, Third Floor, Chardon, Ohio 44024 (For Plaintiff-Appellee).

Christopher Philip Lacich, Roth, Blair, Roberts, Strasfield & Lodge, 100 East Federal Street, Suite 600, Youngstown, Ohio 44503 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Augustus M. Ciresi, appeals the trial court's judgment ordering him to pay restitution. We modify and affirm as modified.

{¶2} Ciresi pleaded guilty to attempted burglary, a third-degree felony in violation of R.C. 2923.02(A). His sentence includes an order to pay \$1,749.68 restitution jointly and severally with his co-defendant.

{¶3} Ciresi raises one assignment of error:

{¶4} “Whether the order for restitution in the amount of \$400 for an heirloom coin collection was in error in light of the evidence presented at the hearing concerning the same? (T.d. 10.)”

{¶5} Both parties indicate that our standard of review when addressing a challenge to a restitution order is an abuse of discretion. However, since the enactment of H.B. 86, we review felony sentences, which include restitution orders, under R.C. 2953.08(G)(2). *State v. LaChance*, 11th Dist. Portage No. 2014-P-0026, 2015-Ohio-2609, ¶ 15; accord *State v. Blas*, 11th Dist. Portage No. 2017-P-0030, 2018-Ohio-2461, ¶ 13. Thus, this court’s decisions, including *State v. Marcellino*, 2019-Ohio-4837, 149 N.E.3d 927, ¶ 23 (11th Dist.), and *State v. Flanagan*, 11th Dist. Ashtabula No. 2015-A-0020, 2015-Ohio-5528, ¶ 42, holding that we review restitution orders for an abuse of discretion are overruled, and *State v. Silbaugh*, 11th Dist. Portage No. 2008-P-0059, 2009-Ohio-1489, ¶ 16, which predates H.B. 86, is abrogated.

{¶6} Our standard of review, as dictated by R.C. 2953.08(G)(2), states:

{¶7} “The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing. The appellate court’s standard for review is not whether the sentencing court abused its discretion. The appellate court may take any action authorized by this division *if it clearly and convincingly finds either of the following*:

{¶8} “(a) That the record does not support the sentencing court’s findings under division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

{¶9} “(b) *That the sentence is otherwise contrary to law.*” (Emphasis added.)

{¶10} Here, none of the sections referenced in R.C. 2953.08(G)(2)(a) apply. Thus, our review is limited to determining whether we clearly and convincingly find that the restitution order is “otherwise contrary to law.” *LaChance, supra*, at ¶ 15. This is an extremely deferential standard of review that places the restriction on the appellate court, not the trial court. *State v. Durham*, 12th Dist. Warren No. CA2013-03-023, 2013-Ohio-4764, 999 N.E.2d 1233, ¶ 43 (12th Dist.).

{¶11} Ciresi solely challenges the trial court’s inclusion of \$400 in restitution for the victim’s heirloom coin collection. Ciresi claims this portion of the restitution order is unsupported and constitutes a due process violation because it was based on speculation. The trial court considered these arguments and rejected them, holding in part:

{¶12} “Ms. Hughes testified that it was difficult for her to determine or prove the value * * * as she had no intention of selling * * * and was not anticipating [the coin collection] being stolen from her home. * * * The court finds that [the grandfather’s coin collection is a] family heirloom * * * and accepts Ms. Hughes’ testimony as to their value.

{¶13} “Defendant argues that the values set forth by the victim are speculative and uncertain.

{¶14} “The court further finds that Ms. Hughes did the best she could, after the fact. She used her recollection and researched the values as to the best of her ability. She provided reasonable testimony * * * as to the fair market value * * *.

{¶15} “* * *

{¶16} “The Court finds the amounts requested are not outrageous or out of the realm of reasonable.”

{¶17} R.C. 2929.18(A)(1) governs restitution orders and states in part:

{¶18} “If the court imposes restitution, the court may base the amount of restitution it orders *on an amount recommended by the victim*, the offender, a presentence investigation report, estimates or receipts indicating the cost of * * * replacing property, and other information, *provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense*. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount.” (Emphasis added.)

{¶19} “Recommend” means in part: “to endorse as fit, worthy, or competent * * *.” *Meriam-Webster’s Unabridged Dictionary*, <https://www.merriam-webster.com/dictionary/recommend> (accessed September 18, 2020).

{¶20} “Economic loss” is defined in part as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes * * * any property loss * * * incurred as a result of the commission of the offense. ‘Economic loss’ does not include non-economic loss or any punitive or exemplary damages.” R.C. 2929.01(L); *State v. Blas*, 11th Dist. Portage No. 2017-P-0030, 2018-Ohio-2461, ¶ 21.

{¶21} “Economic loss” is further defined in as, “[a] monetary loss such as lost wages or lost profits * * *.” *Black’s Law Dictionary* (11th Ed. 2019).

{¶22} Upon addressing this issue, the parties and the trial court reference R.C. 2913.61(D)(1), *Value of stolen property*, which applies when the value of the stolen property is an element of the offense. It states in part:

{¶23} “(D) The following criteria shall be used in determining the value of property * * * involved in a theft offense:

{¶24} “(1) The value of an heirloom, memento, collector’s item, * * * or other thing that has intrinsic worth to its owner and that either is irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, is the amount that would compensate the owner for its loss.”

{¶25} “Heirloom” means in part: “something of special value handed down from one generation to another * * *.” *Meriam-Webster’s Unabridged Dictionary*, <https://www.merriam-webster.com/dictionary/heirloom> (accessed September 18, 2020).

{¶26} “Intrinsic” means “[b]elonging to a thing by its very nature; not dependent on external circumstances; inherent; essential.” *Black’s Law Dictionary* (11th Ed. 2019).

{¶27} Unlike intrinsic value, which reflects value as a personal internal value, the restitution statute limits recovery to the victim’s “economic loss” that connotes a tangible loss of material wealth or money that is objective and determinable in relation to trade.

{¶28} We disagree that R.C. 2913.61(D)(1), *Value of stolen property*, applies when a court is assessing a victim’s economic loss upon ordering restitution under R.C. 2929.18(A)(1). Instead, R.C. 2913.61(D)(1) applies when assessing the level of the offense and thus is an element of the charged offense; it does not govern a court upon assessing the value of stolen property for restitution purposes.

{¶29} Moreover, in this context due process “requires that the amount of restitution ordered bear a reasonable relationship to the actual loss suffered by the victim.” *State v. Chaney*, 2018-Ohio-552, 106 N.E.3d 79, ¶ 12 (12th Dist.), quoting *State v. Stamper*, 12th Dist. Butler No. CA2009-04-115, 2010-Ohio-1939, ¶ 17.

{¶30} As stated, the only value in dispute here is a coin collection that was a gift to one of the victims from his grandfather. Laurie Hughes testified at the December 13, 2019 restitution hearing that Ciresi broke into her family home in March 2019. The Hughes family did not file a claim with their homeowners' insurance because quite a few of the stolen items were recovered and returned to them the next day, and the Hughes' policy had a \$1,000 deductible. Hughes testified to the following on direct examination:

{¶31} "Q. You also reported a family heirloom coin collection was taken. And you valued that at \$400?

{¶32} "A. Correct.

{¶33} "Q. Can you describe the family heirloom coin collection?

{¶34} "A. It was a set of coins that were my husband's grandfather's. His grandfather passed away when he was about 21. It was the only thing he had of his grandfather. I don't know what it was worth.

{¶35} "Q. Had he ever had it appraised?

{¶36} "A. It could be grossly underestimated, and it most likely is, at \$400, grossly underestimated, I would imagine.

{¶37} "Q. It was never appraised?

{¶38} "A. No, it was not.

{¶39} "Q. But again, unlike the ring, would you describe it as being invaluable?

{¶40} "A. Yes.

{¶41} "[Defense counsel]: Objection * * *. Restitution hearings are not based on sentimental value whatsoever. It is based on actual loss, actual economic loss.

{¶42} "* * *

{¶43} “[Prosecutor]: Set forth in Revised Code 2913.61(D)(1), specifically accounts for heirlooms, and in this case being the coin collection from the grandfather and the ring that was given to the victim from her mother.

{¶44} “And the amount to replace that item is the amount to compensate the owner for its loss.

{¶45} “There is not a fair market value for those specific items because there is no fair market value that would ever account for such a loss for heirlooms, so that is why —

{¶46} “[Defense counsel]: * * * There is a fair market value * * *. It could be taken to an appraiser and that value could be ascertained, the actual economic value.

{¶47} “THE COURT: * * * I will overrule the objection and allow the testimony, and I will make that determination.”

{¶48} Hughes answered the following questions on cross-examination by defense counsel about the grandfather’s coin set:

{¶49} “Q. And you described it as very old, but what coins were in it? Were they a proof set, were they collected by your husband’s grandfather?

{¶50} “A. I am not a coin collector. I could not tell you.

{¶51} “Q. So, you have no idea what the value was?

{¶52} “A. No, but I would imagine it is probably under.

{¶53} “* * *

{¶54} “Q. You have no idea what coins were even in that [collection]?

{¶55} “A. No, I do not.”

{¶56} While a victim’s estimated value of the collection is permissible under R.C. 2929.18(A)(1), which permits a court to order restitution based on an amount recommended by the victim, due process requires that the amount of restitution bear a reasonable relationship to the actual loss suffered.

{¶57} The court permitted Hughes’ testimony that the collection was an heirloom with intrinsic value to her husband as acceptable for a basis to order Ciresi to pay her \$400 for the collection. However, she was unable to value their economic detriment with any certainty.

{¶58} Moreover, the trial court improperly relied on R.C. 2913.61(D)(1), *Value of stolen property*, upon permitting testimony regarding the Hughes’ intrinsic value of their heirloom coin collection that was subjective and unsubstantiated. There is no evidence tending to show her actual “economic loss” or monetary loss suffered. Hughes concedes they never had the collection appraised and admits that she lacked any foundation for her estimate valuing the coins at \$400. She likewise did not describe her husband’s grandfather’s collection with any detail regarding the age of the coins, the number of coins, or the origin of the coins. Because there is nothing evidencing that her estimated amount is reasonably related to their economic loss, we find error as a matter of law. R.C. 2953.08(G)(2)(b).

{¶59} Accordingly, Ciresi’s sole assigned error has merit. The trial court’s \$1,749.68 restitution order is reduced by \$400, and Ciresi is now ordered to pay \$1,349.68 in restitution. The remainder of the court’s decision remains unchanged.

{¶60} The trial court’s decision is modified and affirmed as modified.

MATT LYNCH, J., concurs,

CYNTHIA WESTCOTT RICE, J., dissents with a Dissenting Opinion.

CYNTHIA WESTCOTT RICE, J., dissents with a Dissenting Opinion.

{¶61} The majority maintains that because the victim was unable to provide certain testimony regarding the actual economic loss suffered, the trial court erred in granting restitution as a matter of law. The victim clearly suffered some economic loss and there is nothing to suggest the recommended restitution was exorbitant or unreasonable. I therefore dissent.

{¶62} On direct examination, the victim explained the research she had done to ascertain the values of different coin sets that belonged to her children that were also stolen by appellant. The victim testified that she and her husband purchased mint coin sets for their three daughters for each year of their lives. After the robbery, some of their daughters' coins were recovered, but none of the sets were intact. The packages were torn open, which reduced the value of the coins to face value. According to the United States' Mint website, however, her daughters' mint coin sets were valued at \$1,148.80 before they were stolen.

{¶63} Although the victim could not verify, with certainty, the value of the grandfather's coin collection, she confirmed that the collection was an heirloom with intrinsic value to her husband. She further noted that the collection was irreplaceable and consequently estimated \$400 would compensate them for its loss. I recognize the victims did not have the collection appraised; still, the victim stated her valuation was "most likely" a gross underestimation and described the collection as "invaluable." An estimated value

of the coin collection was permissible under R.C. 2929.18(A)(1), which explicitly allows a court to order restitution based on an amount recommended by the victim. There was nothing to indicate that \$400 exceeded the victims' economic loss or that it was punitive in nature. And this amount was neither excessive nor inconsistent with the value of the newer, mint coin collections that were stolen. Accordingly, and in light of our deferential standard of review, I would conclude that the restitution order is not clearly and convincingly contrary to law.