COURT OF APPEALS
DECISION
DATED AND RELEASED

November 22, 1995

No. 94-3135-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RODNEY E. HILL,

Defendant-Appellant.

APPEAL from an order of the circuit court for Racine County: NANCY E. WHEELER, Judge. *Affirmed*.

Before Brown, Nettesheim and Snyder, JJ.

PER CURIAM. Rodney E. Hill appeals from a postjudgment order extending his probation by one year and ordering him to pay restitution in the amount of $2571.79 to his victim's insurance company. Because we conclude that the trial court properly exercised its discretion in ordering restitution in this amount, we affirm.

Hill was charged with being party to the crime of strong-armed robbery of Peter Barth contrary to §§ 943.32(1)(a) and 939.05, STATS. Hill entered

a no contest plea to the reduced charge of theft of movable property as a habitual offender and party to the crime, a misdemeanor contrary to §§ 943.20(1)(a) and 939.05, STATS. His one-year sentence was stayed and he was placed on probation for one year and ordered to pay restitution. A restitution hearing was held in July 1994.

Hill and Barth testified at the restitution hearing. It was undisputed that Barth suffered miscellaneous losses as a result of the robbery in the amount of $571.79.[1] Barth was reimbursed by his insurance company in this amount. The dispute in the trial court and on appeal has to do with an additional $2000 ordered as restitution for a gold rope chain and gold nugget pendant.

Barth testified that he always wore the necklace, which he believed he had purchased fourteen or fifteen years before in Philadelphia. He was wearing it at the time of the robbery but did not realize it was missing until he undressed for bed later that night after talking to police. Barth first claimed the necklace was lost a couple of weeks after the robbery when he submitted an itemized list of his losses, along with copies of available receipts, to Racine County's victim/witness assistance program.

Barth could not recall what he paid for the necklace when he purchased it. However, he presented a jeweler's estimate reflecting a replacement value of $3400 for the chain and the nugget. Barth had not separately insured this item of jewelry under his homeowner's insurance policy and the insurance company refused to reimburse him for the full estimated replacement value. Under cross-examination, Barth declined to deviate from his claim that he was wearing the necklace on the night of the robbery and that it must have fallen off during the struggle with Hill. The trial court ordered $2000 restitution to Barth's insurer for the necklace.

[1] Barth's eyeglasses were damaged in his struggle with Hill, he had to replace keys and locks because keys were stolen in the robbery, his ring was damaged in the scuffle, and he had to replace his stolen wallet and cash.

On appeal, Hill argues that there is no factual basis in the record to support restitution for the necklace in the amount of $2000. Specifically, Hill questions whether the necklace disappeared as a result of the robbery and whether it was properly valued. Hill also argues that the trial court did not specifically find that justice required restitution for Barth's insurer.

Restitution is governed by § 973.20, STATS. A trial court may order restitution to reimburse an insurer who has compensated a victim for a loss otherwise compensable under § 973.20 "[i]f justice so requires ...." Section 973.20(5)(d).[2] The victim must demonstrate his or her loss by a preponderance of the evidence. Section 973.20(14)(a).

The amount of restitution is discretionary with the trial court. *See* ***State v. Kennedy***, 190 Wis.2d 253, 262-63, 528 N.W.2d 9, 13 (Ct. App. 1994). The exercise of discretion requires examining the relevant facts, applying the proper legal standard and reaching a conclusion that a reasonable judge could reach. ***Id***. at 263, 528 N.W.2d at 13.

We reject Hill's contention that the restitution order is flawed because the trial court did not explicitly state that justice required Hill to reimburse Barth's insurer. A trial court's failure to use "magic words" is not reversible error. ***Michael A.P. v. Solsrud***, 178 Wis.2d 137, 151, 502 N.W.2d 918, 924 (Ct. App. 1993). It is implicit in the trial court's statement that it would be "appropriate" and not "unfair" for Hill and his co-defendant to reimburse Barth's insurer that justice so required. In this case, remanding to permit the trial court to make this implicit finding explicit "would be both superfluous and a waste of judicial resources." ***Englewood Apartments Partnership v. Grant & Co.***, 119 Wis.2d 34, 39 n.3, 349 N.W.2d 716, 719 (Ct. App. 1984).

We also reject Hill's challenge to the sufficiency of the record to support the restitution order. While the trial court initially had some concern that the necklace may not have been lost in the robbery, the record indicates that the trial court resolved that concern: (1) it accepted evidence that the insurance

[2] On appeal, Hill disputes whether the necklace disappeared and its value. He does not contest his ability to pay restitution, *see* § 973.20(13)(a)2, STATS., or other aspects of the restitution order.

company reimbursed Barth for part of the value of the necklace, and (2) it found that restitution would be "appropriate" and not "unfair." It is apparent from the record that the trial court was reasonably satisfied that the necklace was lost in the robbery, notwithstanding its initial indication to the contrary.

Hill claims the $2000 value assigned to the necklace is not supported in the record. In clarifying the value of the necklace for restitution purposes, the trial court noted that its file contained documents from February 1994 indicating that the insurance company paid Barth $2571.79. Apparently this information was contained in a computerized statement from the insurance company and was appended to a memorandum from the probation agent. However, this document is not in the record on appeal. When an appeal is brought upon an incomplete record, this court assumes that every fact essential to sustain the trial court's decision is supported by the record. ***Suburban State Bank v. Squires***, 145 Wis.2d 445, 451, 427 N.W.2d 393, 395 (Ct. App. 1988). Here, we assume that this document indicates that Barth's insurer paid him $2571.79 for losses arising out of the robbery, $2000 of which was attributable to the necklace.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.