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DISTRICT II

March 2, 2022

To:

Hon. Richard J. Nuss
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County
Electronic Notice

Kara Lynn Janson
Electronic Notice

Brent Simerson
Electronic Notice

Eric Toney
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2020AP1830-CR State of Wisconsin v. Brandon J. Reinl (L.C. #2018CF652)

Before Gundrum, P.J., Grogan and Kornblum, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Brandon J. Reinl appeals from a judgment and a postconviction order, claiming the evidence presented at the restitution hearing in this case was insufficient to support the amount of restitution ordered by the court. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ For the following reasons, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

At the restitution hearing, Exhibit 1 was received into evidence, which exhibit detailed the various items of jewelry the victim believed Reinl had stolen and what she believed their value to be, totaling \$11,250 for all items. With regard to three specific items, the victim provided the circuit court with written appraisals from reputable jewelers that showed those items as totaling \$1,869. The victim testified that her great-great-grandmother's antique twenty-four karat white gold Bulova watch with two two-carat weight diamonds had been verbally appraised in February 2011 for \$5,000 by Fox Diamond Center. She further testified to her own estimates of the value of more than a dozen other stolen items of jewelry for which she did not have appraisals.

On cross-examination, Reinl challenged the victim's credibility, both as to her recall of the items she claimed were stolen and as to her estimates of the value of those items. The circuit court too, questioned the victim regarding her ability to recall the missing items and details related to them. In the end though, the court stated that it was "giving [the victim's] credibility weight."

In arguments following the close of evidence, Reinl, relying in part on low dollar amounts a pawn shop gave him for various items of the victim's stolen jewelry, first suggested to the court that it "could determine appropriate value" but that such value "is probably not in excess of a few hundred dollars in total for all of the things that we have reason to believe were taken by Mr. Reinl and at least the ones [that had been] pawned."

The State responded by arguing that "what a pawn shop might pay someone for an item has no real world ... benefit to the ultimate question" and is "not relevant or at least not weighty in terms of relevance" because "[a] [p]awn shop gives you a penny or a nickel on a dollar."

Related to the \$5,000 verbal appraisal for the watch, the State pointed out that the victim testified under oath to that amount. In the end, the State also expressed, “I realize it’s going to be a compromise number at best for that.” The State added that “[a]s far as the [non-appraised] items go ... maybe that’s where the take and the give come into play.” It continued:

But as far as the appraisals and the [great-great-grandmother’s watch], I think that she ... at least has raised a prima facie case of value loss by a preponderance of the evidence and [the State] ask[s] the Court to consider those things in making the assessment of any claim.

Reinl responded by contending that the victim was “overestimating” the value of the stolen items. He told the circuit court, “We would suggest that the Court could *craft* a much smaller amount of restitution that would be *fair*. I can’t—we have no way to know how much it’s overestimated.” (Emphasis added.) As to the State’s point that pawn shops pay less than an item’s actual worth, Reinl stated, “I take [the State’s] point but only up to a certain level.” Reinl then again invited the court “to *craft* a much smaller amount of restitution than what’s been requested on Exhibit 1 [\$11,250], as the Court *feels is fair, taking all of the different factors into account*.” (Emphasis added.)

The circuit court did just as Reinl requested; it “craft[ed]” a restitution amount it “fe[lt] was] fair, taking all of the different factors into account.” Related to the three items with written appraisals, the court stated, “I don’t care if that jewelry is 50 years old, somebody appraised it, that was the market value, if anything it’s probably worth more than less.... Because I don’t think that stuff depreciates, probably. It probably appreciates.” The court awarded the victim \$1,869, as identified on the three appraisals.

As to the victim's great-great-grandmother's watch, the circuit court stated:

[W]e got to take you for your word; you go in, you have a jeweler look at it....

...[Y]ou know, the Court is caught between the cross hairs on that.... [Y]ou say it's worth 5,000, or the jeweler said it's worth 5,000, and you're here to testify today that, yeah, it's worth 5,000. Well, I'm satisfied it probably ... did exist, I'm satisfied that it probably does have some value, and I'm probably satisfied that it probably had, you know, maybe some significant value.

In the end, the court awarded the victim \$3,000 for the watch, saying, "It's a gut check" because "[w]e don't have any strong evidence, we have your testimony, I'm giving that weight, I'm giving your credibility weight."

Considering the non-appraised items of jewelry, the circuit court recognized that, like the victim, most of society would not have "paperwork" related to the items, and it "factor[ed] ... in" what the "market value" would be, not the pawn-shop value. The court awarded the victim \$1,000 for these stolen items. In the end, the court awarded the victim \$5,869 in restitution out of the \$11,250 to which she claimed entitlement.

Reinl claims the circuit court erred because "the evidence was insufficient to establish replacement cost or actual value, it just reduced the claimed amount arbitrarily to make up for it. This is not an acceptable practice." Reinl's complaint falls on deaf ears as he received precisely what he asked for at the restitution hearing—the court "craft[ing] a much smaller amount of restitution than what's been requested on Exhibit 1 [\$11,250], as the Court feels is fair, taking all of the different factors into account." Reinl cannot now turn around and complain because the court's "gut check" as to what was "fair" for the stolen items was a higher dollar amount than he was hoping for. If the court committed any error, it is because Reinl invited it, and we do not review invited error. *See State v. Freymiller*, 2007 WI App 6, ¶15, 298 Wis. 2d 333, 727

N.W.2d 334 (“Generally, where a party ‘invites error’ on a given issue, we will not review the issue on appeal.”); *see also Soo Line R.R. Co. v. Office of Comm’r of Transp.*, 170 Wis. 2d 543, 557, 489 N.W.2d 672 (Ct. App. 1992); *EPF Corp. v. Pfof*, 210 Wis. 2d 79, 86, 563 N.W.2d 905 (Ct. App. 1997), *overruled on other grounds by Ramage v. Gullberg*, 2000 WI 53, ¶29, 235 Wis. 2d 279, 611 N.W.2d 458.

For the foregoing reasons, we affirm.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.
See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals