

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 26, 2011

v

RONALD STACY WEAVER,

Defendant-Appellant.

No. 296601
Oakland Circuit Court
LC No. 2009-225867-FH

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this appeal on remand from our Supreme Court as on leave granted,¹ defendant Ronald Stacy Weaver challenges the propriety of the trial court's order, after his plea-based conviction for operating a motor vehicle under the influence of intoxicating liquor, third offense, see MCL 257.625(9)(c), requiring him to pay restitution for the damage that he caused in the accident leading to his conviction. Specifically, Weaver argues that the trial court erred when it ordered him to pay \$7,277.95 in restitution on the basis of evidence that it would have cost that much to repair the vehicle he struck, had it been repaired. Instead, he maintains, the trial court only had the authority to order restitution equal to the fair market value of the car before the accident. We conclude that the trial court had the authority to order restitution beyond the fair market value of the vehicle damaged in the accident under certain circumstances, but that the trial court nevertheless erred because, under the undisputed facts of this case, the prosecutor did not present sufficient evidence to establish the amount of restitution ordered by a preponderance of the evidence. For that reason, we vacate the trial court's order of restitution and remand for a hearing to establish the fair market value of the victim's vehicle and to establish whether the victim incurred any additional losses beyond the fair market value of his damaged vehicle.

¹ See *People v Weaver*, 487 Mich 851 (2010).

This Court reviews de novo the proper interpretation of statutes, such as those governing restitution. *People v Bemmer*, 286 Mich App 26, 31; 777 NW2d 464 (2009). This Court reviews a trial court’s factual findings in calculating an order of restitution for clear error. MCR 2.613(C). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *People v Akins*, 259 Mich App 545, 564; 675 NW2d 863 (2003).

Michigan courts are required to order a defendant convicted of a crime to pay “full restitution to any victim of the defendant’s course of conduct that gives rise to the conviction . . .” See MCL 780.766(2);² *People v Gahan*, 456 Mich 264, 270 n 6; 571 NW2d 503 (1997) (noting that, after the passage of 1993 PA 341, trial courts no longer had the discretion under MCL 780.766(2) to order restitution—they were required to order restitution).³ In calculating the restitution required under MCL 780.766, the court must consider the “amount of the loss sustained by any victim as a result of the offense.” MCL 780.767(1). In any dispute over the amount of restitution, the prosecutor has the burden to show that the victim “sustained” the loss by a preponderance of the evidence. MCL 780.767(4).

Notwithstanding the requirement for full restitution under MCL 780.766(2), the Legislature made specific provision for restitution involving damage to property: if the “crime results in damage to or loss or destruction of property”, the court must order the “return of the property.” MCL 780.766(3)(a). If it is impossible, impractical, or inadequate to return the property, the court shall order the defendant to pay “the value of the property” on either the date of the damage, loss, or destruction or on the date of sentencing, whichever results in a greater amount, less the value of any portion of the property that is returned to the victim. MCL 780.766(3)(b).⁴

In this case, the trial court held a hearing to determine the appropriate amount of restitution. David Ollie Ray testified that, as he drove his 1996 Chevrolet Suburban into his driveway, Weaver crashed into him. The crash bent the Suburban’s frame. Ray testified that he obtained a written repair estimate of \$8,177.95 from a Chevrolet dealership and, after that, he

² We note that the provisions of MCL 780.766 are substantially the same as those found under MCL 769.1a, which also requires a trial court to order restitution at sentencing.

³ This Court will occasionally state that it reviews a trial court’s decision to order a specific amount of restitution for an abuse of discretion. See, e.g., *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003). However, the cases that recite this standard of review appear to trace their origins to cases interpreting the statutes at issue prior to the amendments that made restitution mandatory. See *People v Tyler*, 188 Mich App 83, 88; 468 NW2d 537 (1991) (noting that, under a prior version of MCL 780.766(2), trial courts had the discretion to order restitution). Because it must order “full restitution” to the victims under the current versions of MCL 780.766(2) and MCL 769.1a(2), a trial court necessarily abuses its discretion when it orders less than full restitution and similarly abuses its discretion when it orders restitution that exceeds full restitution.

⁴ The Legislature amended this section after the sentencing at issue. See 2009 PA 28.

realized that the “vehicle was totaled.” The prosecutor admitted the estimate without objection. Nevertheless, Ray stated that he did not repair the Suburban; he sold it as scrap for \$900.

Weaver testified that he crashed his 1996 GMC Safari in the accident at issue. He researched the worth of his vehicle because it too had been damaged. He noted that his vehicle was from the same year as Ray’s and that the value of his vehicle was only \$1,500. From this, he argued that the repair estimate provided an exaggerated value. Weaver asked the trial court to order restitution of \$1,500, which he believed was the approximate value of Ray’s vehicle at the time of the accident. In the alternative, Weaver asked that the restitution amount be offset by the \$900 Ray received for the sale of the vehicle.

The trial court ultimately found that Ray suffered \$7,277.95 in losses and ordered restitution in that amount:

And based on the testimony of Mr. Ollie Ray—I don’t discount what Mr. Weaver is saying may be Blue Book, but the point is his car [Ray’s] was wrecked and it would cost a lot of money to fix it. Whether or not there is a Blue Book value to it or not, I don’t have the Blue Book in front of me. And Mr. Weaver certainly isn’t an expert.

Therefore, the Court will order restitution of \$7,277.95 to be paid.

MCL 780.766(3)(b) provides that a trial court must order restitution for losses that a victim sustains to his or her property. However, the restitution must be based on the “value of the property.” See MCL 780.766(3)(b)(i) and (ii). This Court has held that the plain and ordinary meaning of the term “value”, when used to refer to the value of property, means monetary or fair market value—that is, what a ready, willing, and able buyer would pay for the property on the open market.⁵ See *Wolfe-Haddad Estate v Oakland County*, 272 Mich App 323, 325-326; 725 NW2d 80 (2006) (reciting this definition and noting that the ordinary meaning is so obvious as to defy the need to resort to a dictionary). But the prosecutor did not present any evidence concerning the fair market value of Ray’s vehicle. Rather, the trial court relied solely on the written estimate that established the cost to repair Ray’s vehicle. The cost to repair a vehicle will—in many cases—bear no relationship to the vehicle’s fair market value. Indeed, an owner might pay to repair a vehicle even though the repair far exceeds the vehicle’s fair market value. Notwithstanding that, a trial court’s authority to order restitution for property is limited: the court must determine that the return of the property is “impossible, impractical, or inadequate” and must then order restitution equal to the “value of the property” less any value that the property retained after the loss. MCL 780.766(3)(b); see also 769.1a(3)(b). Here, the prosecutor did not present any evidence concerning the value of Ray’s vehicle prior to the

⁵ We note that, with 2009 PA 28, the Legislature specifically amended MCL 780.766(3)(b)(i) and (ii) to insert “fair market” before the word “value.” The Legislature also provided that, if the fair market value of the property cannot be determined or is impractical to ascertain, then the court shall utilize the “replacement value” of the property lieu of fair market value.

accident and the undisputed evidence showed that Ray sold the vehicle rather than have it repaired. For that reason, there was insufficient evidence to support the trial court's order of restitution.

We do not mean to suggest that the trial court could not order additional restitution occasioned by the loss of Ray's vehicle beyond its loss in value. Under MCL 780.766(2) the trial court must order full restitution for all losses that Ray may have sustained, which includes all losses that he sustained even though those losses might be tangentially related to the damage to his vehicle. By way of example, with adequate evidentiary support, the trial court could order restitution under MCL 780.766(2) for such things as wages lost while shopping for a new vehicle or having the damaged vehicle repaired. It might also order restitution for interest expenses incurred as a result of having to finance a new purchase to the extent that the expenses would be incurred during the expected remaining lifespan of the lost vehicle. In addition, to the extent that the cost of a repair that actually occurred exceeded the value of the vehicle after the repair, that difference might be compensable under MCL 780.766(2). But such restitution would not be for the loss in value of property under MCL 780.766(3). Rather, such restitution would be for separate expenses directly arising out of the accident. Here, the prosecution did not present any evidence to support such additional restitution.

The trial court did not have the authority to order restitution for the value of the property on the basis of a repair estimate that did not involve an actual estimation of the vehicle's value and which did not actually occur. See MCL 780.767(1) (stating that the court must consider evidence of losses that the victim "sustained" as a result of the offense). For that reason, we vacate the trial court's order of restitution and remand this matter for a new hearing to order restitution premised on the fair market value of Ray's vehicle less the money he received from its sale. At the hearing, the prosecution may present evidence that Ray suffered additional losses beyond the loss in value of his property for which he is entitled to additional restitution under MCL 780.766(2).

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly