IN THE COURT OF APPEALS OF IOWA

No. 1999-277 (9-507) / 98-1886
Filed October 27, 1999

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUSTIN DAVID MOZENA,
Defendant-Appellant.

Appeal from the Iowa District Court for Carroll County, Joel E. Swanson, Judge.

Defendant appeals the restitution order entered following his guilty plea to first-degree theft. **AFFIRMED.**

Joseph B. McCarville, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, **Roxann M. Ryan,** Assistant Attorney General, **and John C. Werden,** Jr., Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Mozena pled guilty to first-degree theft. Mozena and three codefendants admitted taking a large coin collection from Ronald Muhlbauer's home. They also took the only written inventory of Muhlbauer's collection. Neither the coins nor the inventory were recovered.

Mozena's judgment of conviction was deferred. He was placed on probation for five years and ordered to make $193,000 restitution to Muhlbauer. On appeal Mozena challenges the sufficiency of the evidence supporting the amount of restitution ordered.

II. Scope of Review.

Our review of a restitution order is for correction of errors at law. *State v. Klindt*, 542 N.W.2d 553, 554 (Iowa 1996). The district court's findings of fact have the effect of a special verdict. *See* Iowa R. App. P. 4.

III. The Merits.

In *State v. Watts*, 587 N.W.2d 750 (Iowa 1998), the supreme court recited those principles of law dispositive of Mozena's restitution claims:

> Restitution is authorized by Iowa Code chapter 910 and is mandatory in all criminal cases in which the defendant pleads guilty. Iowa Code § 910.2. The amount of restitution is not limited by the parameters of the offense for which the defendant enters a guilty plea, *Earnest v. State*, 508 N.W.2d 630, 633 (Iowa 1993), ...
>
> The pecuniary damages in a restitution order

> means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.

Iowa Code § 910.1(3). The amount of damages is set by the court, without a jury. Iowa Code § 910.3; *see State v. Mayberry*, 415 N.W.2d 644, 647 (Iowa 1987) (restitution amount not constitutionally required to be set by jury).

. . .

We have said that section 910.1(3)

> connotes a requirement that the victim prove a prima facie case of liability premised on some civil theory such as fault or intentional tort. Proximate cause, of course, would be a necessary element of such a prima facie case.

State v. Starkey, 437 N.W.2d 573, 574 (Iowa 1989).

Id. at 751. When these requirements are met, section 910.2 permits recovery of all damages the State can prove by a preponderance of the evidence. *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989) (citing *State v. Starky*, 437 N.W.2d 573, 574 (Iowa 1989).

Mozena contends the State failed to meet its burden because their valuation evidence was limited to Muhlbauer's testimony. He argues Muhlbauer's testimony concerning the number of coins taken and their value was speculative and that more authoritative evidence of the coins' value was required. We disagree.

The record indicates Muhlbauer was a numismatist with thirty-five years of collecting experience. He testified that a 1989 appraisal of the coins valued his collection at $200,000. He estimated the value of the collection at the time of theft

was $300,000 to $350,000. There is also evidence Muhlbauer found $6200 worth of coins that were not taken during the theft. Muhlbauer acknowledged the difficulty of defining the amount of his loss without the missing inventory and that he was required to rely, in large measure, on his memory and knowledge of the coin market.

Muhlbauer's testimony matched the descriptions of the property and approximations of the number of coins taken included in the testimony of Mozena's codefendants. There is evidence four pillowcases full of coins were stolen.

The general rule is that an owner may testify as to actual value without a showing of general knowledge of market value. *State v. Savage*, 288 N.W.2d 502, 505 (Iowa 1980).

> The primary reason for admitting such an estimate of value is that of necessity, the owner necessarily knowing something about the quality, cost and condition of the article, and it often being impossible to produce other witnesses having the requisite knowledge upon which to base an opinion. But the rule of admissibility is more frequently predicated on the presumption that the owner, being familiar with his property, knows what it is worth.

Id.

We believe Muhlbauer's testimony fortified by this presumption and his substantial experience as a coin collector provides sufficient evidentiary support for the district court's determination of the value of the coins stolen. The restitution award is accordingly affirmed.

AFFIRMED.