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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

PATRICK P. MENDIOLA,
Defendant-Appellant.

Supreme Court No. 2016-SCC-0006-CRM
Superior Court No. 14-0085-CR

SLIP OPINION

Cite as: 2017 MP 10

Decided October 17, 2017

Matthew C. Baisley and Betsy Weintraub, Assistant Attorneys General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

Michael A. White, Saipan, MP, for Defendant-Appellant.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice; PERRY B. INOS, Associate Justice.

INOS, J.:

¶ 1 Defendant-Appellant Patrick P. Mendiola (“Mendiola”) appeals the amount of restitution imposed as a part of his sentence for his role in an attempted burglary of copper wire. Mendiola presents two issues on appeal: (1) whether there was enough evidence to support the trial court’s valuation of the copper wire; and (2) whether the trial court abused its discretion when it failed to consider the salvage value of the damaged copper wire in calculating restitution. For the following reasons, we AFFIRM the trial court’s restitution calculation, but GRANT the trial court leave to correct a clerical error in the order.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 Police apprehended Mendiola and three accomplices as they attempted to steal copper wire from an abandoned building. At the time police apprehended them, they had extracted and cut 432 feet of copper wire from its original installation. Police recovered the wire at the scene.

¶ 3 Mendiola pled guilty to one count of Burglary. Following a restitution hearing the trial court ordered Mendiola to pay \$1,835.92, his pro rata share, in restitution as part of his sentence. The trial court calculated the restitution amount using the replacement cost method under 6 CMC § 4109(b)(1)¹ without considering any potential salvage value.

¶ 4 Mendiola now appeals the restitution order.

II. JURISDICTION

¶ 5 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art IV, § 3.

III. STANDARDS OF REVIEW

¶ 6 Mendiola raises two issues: (1) whether there was enough evidence to support the trial court’s valuation of the copper wire; and (2) whether the trial

¹ 6 CMC § 4109 permits the court to include “every determined economic loss incurred as a result of the person’s criminal conduct” in its restitution calculation, including “[f]ull or partial payment for the value of the stolen property” which is either “the replacement cost of like property” or “the actual cost of repairing the property” when such repair is possible. 6 CMC § 4109(b)–4109(b)(1). Here the court heard testimony about the price per foot of copper wire—\$16.99 per foot—and multiplied it by the amount removed—432 feet—to determine the replacement cost of like property. The resulting replacement value of the wire as offered by the Commonwealth of the Northern Mariana Islands (“Commonwealth”) was \$7,339.68 divided by four, the number of co-conspirators, for a result of \$1,834.92 per conspirator. However, in its order the trial court directed Mendiola pay \$1,835.92.

court abused its discretion when it failed to consider the salvage value of the copper wire when calculating restitution.

¶ 7 In the criminal context, restitution is a part of the sentence. *See* 6 CMC ¶ 4109(j) (“A probationer who has been sentenced to pay a fine or restitution may request a hearing regarding the probationer’s ability to pay the fine or restitution.”); *Commonwealth v. Calvo*, 2014 MP 7 ¶ 10 (“The court also sentenced Calvo to seven years of probation, 1,500 hours of community service, and restitution. . . .”). Sentencing discretion is generally reviewed for abuse of discretion. *Commonwealth v. Yi Xiou Zhen*, 2002 MP 4 ¶ 13. Additionally, while we have not previously addressed the standard of review for restitution specifically, federal courts have held when a restitution order is within the bounds of a statutory framework, as it is here, it is reviewed for abuse of discretion. *E.g.*, *United States v. Brock-Davis*, 504 F.3d 991, 996 (9th Cir. 2007). However this Court has established, at least in the civil context, that factual findings underlying a trial court’s calculation of restitution are reviewed under the clearly erroneous standard. *Camacho v. L & T International Corp.*, 4 N.M.I. 323 (1996). On the basis of both our civil case law, *id.*, and federal criminal holdings, *Brock-Davis*, 504 F.3d at 996, we now explicitly establish the clearly erroneous standard applies to the review of factual findings underlying a trial court’s restitution calculation in the criminal context.

¶ 8 Mendiola’s first issue concerns whether the trial court had enough evidence to determine the value of the copper wire. As it relates to the factual findings supporting the trial court’s restitution order, we review for clear error. With regard to Mendiola’s second issue, when a restitution order is within the bounds of a statutory framework we review for abuse of discretion. *Brock-Davis*, 504 F.3d at 996. Mendiola does not argue the restitution order exceeds the bounds of our restitution statute, 6 CMC § 4109. Thus we review the trial court’s decision to award the full replacement value of the wire as restitution, rather than deducting the salvage value of the wire from the total restitution, for abuse of discretion.

IV. DISCUSSION

1. Valuation of the Copper Wire

¶ 9 Mendiola presents three primary arguments as to why the evidence was insufficient. First, he argues the Commonwealth failed to present evidence as to the condition of the wire at the time it was recovered. Second, he argues there was no evidence regarding what may have happened to the wire in the seventeen month period between its recovery and the Commonwealth expert’s examination of the stolen wire before trial. Third, he argues because the Commonwealth only presented one price quotation for the replacement copper wire, there was insufficient support for the trial court’s chosen value of the replacement wire. We review the trial court’s findings under the clear error standard. “A clear error exists only if after reviewing all the evidence we are left with a firm and definite conviction that a mistake has been made.”

Commonwealth v. Crisostomo, 2014 MP 18 ¶ 8 (citation and internal quotation marks omitted).

¶ 10 At the restitution hearing, the Commonwealth presented two witnesses, Alfredo Palatto, Jr. (“Mr. Palattao”) and Department of Public Safety Investigator Catherine Pangelinan (“Investigator Pangelinan”). Mr. Palattao, a Commonwealth Utilities Corporation engineer with thirty years of experience, testified the copper wire was no longer usable because of damage to the insulation. He testified the damage was consistent with the practice of copper wire thieves. Investigator Pangelinan, the assigned investigator on the case, testified about her investigation into the crime, and the recovery of the copper wire. Investigator Pangelinan testified she had identified the copper wire as 400 MCM wire and had, about two weeks after the attempted theft, inquired into the replacement price of the wire from an electric hardware store in Saipan, where she was quoted a price of \$16.99 a foot. She identified a photograph of the wire as the same wire recovered at the scene, and noted 432 feet of wire was recovered.

¶ 11 Mendiola’s argument rests on the possibility the wire was either already damaged at the time Mendiola removed it from the generator at the crime scene, or was further damaged during the seventeen month period between the wire’s recovery and Mr. Palattao’s inspection. This argument directly contrasts with testimony at trial. During direct examination, Mr. Palattao testified that the damage was consistent with the practice of copper wire thieves,² and that the damage rendered the copper wire unusable³. These points were further emphasized when the trial court questioned Mr. Palattao.⁴ No other theories or methods through which the wire might have been damaged were offered, nor were any alternative price quotations for the replacement wire presented.

² COUNSEL: Do you know what would cause that kind of damage?

MR. PALATTAO: You see, this . . . issue is about wire theft, so the tendency of the guy who will steal that is to get those wires immediately. So anything that will happen to that wire . . . will really damages [sic] the wire. So it’s not applicable to be used anymore.

Tr. 6.

³ COUNSEL: What happened to the covering of the wires?

MR. PALATTAO: There is some, you know, damages that, uh, it’s not, uh, adaptable for usage.

Tr. 6.

⁴ THE COURT: Okay. Is – is that damage caused by somebody peeling the insulation away to get the copper wire itself?

MR. PALATTAO: Yes.

THE COURT: Is that the case with this?

MR. PALATTAO: Yeah.

THE COURT: All right. And, um, once that’s done, you can’t use this again. You can’t wire it up because somebody’s liable to get electrocuted.

MR. PALATTAO: Yes.

Tr. 10.

¶ 12 Outside of an unsupported contention that something might have happened over the intervening seventeen-month period between the recovery and the relevant testimony,⁵ Mendiola points to no evidence to support his theory. As such, there is no clear error in the trial court’s valuation of the copper wire.

2. Actual Loss v. Replacement Cost

¶ 13 6 CMC § 4109 governs restitution. Mendiola argues the statute limits the amount of restitution, capping it at the total sum of a victim’s economic loss. We begin by examining the statutory language in question, and applying the plain meaning rule. *See Commonwealth v. Atalig*, 2002 MP 20 ¶ 27 (quoting *Caminetti v. United States*, 242 U.S. 470, 485) (“if [the language of the statute] is plain. . . the sole function of the courts is to enforce it according to its terms.”) The plain language of Section 4109(b)(1) states, in relevant part: “[t]he value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is feasible.” Mendiola argues the replacement cost of the property, in this case the copper wire, should take into account the salvage value of the damaged wire. Mendiola argues the language of Section 4109(b), “for every determined economic loss incurred as a result of the person’s criminal conduct,” should be held to mean a victim should not be compensated beyond the sum of their economic loss—the value of the undamaged item minus any potential remaining value of the damaged item. Put simply, Mendiola argues the trial court should subtract the salvage value of the copper wire from the total replacement cost.

¶ 14 In some contexts, this interpretation is logical. For example, if a thief steals a car, and does \$100 in damage to a bumper, it would not make sense under the statute to determine the restitution amount to be the full value of the car. Instead, the value should be the cost of repairing the bumper. Or if a victim can mitigate further damage but fails to do so, a defendant might escape being assessed the additional costs incurred due to the victim’s inaction. Yet in many contexts, this logic does not apply. Mendiola relies heavily on a 1995 California State Court of Appeal case, *People v. Yanez*, 46 Cal. Rptr. 2d 1 (Cal. Ct. App. 1995). There, the court determined restitution in the amount of the repair costs,

⁵ MR. WHITE: Thank you, Your Honor. We certainly admitted to the charge and, uh, if Ms. Barcinas wants to testify that . . . the, uh, wire was in police custody all that time, that’s fine. But we have no witness here to testify who had access to the copper wire or whether a policeman might – or somebody else who works for the Department of Public Safety might have done something to the copper wire in the effort to get a few extra bucks because our police department is underpaid. I don’t know what happened to the copper wire. The Court doesn’t know what happened to the copper wire. I think it’s just unfair, fundamentally unfair to stick this defendant with eighteen hundred dollars worth of, uh – uh, of restitution when that’s not the damage that the victim suffered.

which exceeded the actual value of the damaged vehicle, was excessive. However, *Yanez* has been expressly overturned by subsequent rulings. For instance, in 2012 the California Supreme Court noted:

A dozen years later the Court of Appeal . . . expressly disagreed with the decision in *Yanez* Limiting the amount of restitution to the replacement cost would not make the victim whole [The relevant restitution statute] is devoid of language stating that a trial court’s restitution award should be limited to the *lesser* of the “replacement cost” of the victim’s damaged property or “the actual cost of repairing the property when repair is possible.” The statute leaves the choice to the trial court.

People v. Stanley, 279 P.3d 585, 587 (Cal. 2012) (internal citations omitted).

¶ 15 Moreover, *Yanez* does not support Mendiola’s argument. In *Yanez*, the defendant was found guilty of receiving stolen property, a 1978 Chevrolet El Camino. The court considered whether the trial court could order restitution covering the cost of repairs, which was greater than the replacement cost of the vehicle. The court determined the trial court was limited to the lesser of “(1) The difference between (i) the market value of the property before the commission of the [crime] and (ii) the market value afterwards; or (2) The reasonable cost of repairing the damaged property to the condition it was in prior to being damaged. . . .” Here, the copper wire can no longer be used for its intended purpose. Its market value, in that regard, is zero.

¶ 16 A broad search of other jurisdictions reveals little support for considering salvage value when calculating restitution. Few other courts have recognized salvage value when calculating restitution, and those which have do so only in specific circumstances. For example, the North Dakota Supreme Court recognized retail items stolen and returned to a store in saleable condition might have salvage value, but left the discretion of determining what that value might be to the trial court. *State v. Gendron*, 747 N.W.2d 125, 129 (N.D. 2008) (“[S]ome of the items [the defendant] returned to Kohl’s may have been sold and may have provided at least some minimal salvage value. While the court could have considered a salvage value, we cannot say the district court abused its discretion by not doing so.”). The Alabama Supreme Court determined salvage value should be deducted when calculating the amount owed by an insurer to an insured. *Aetna Casualty & Sur. Co. v. Ardizone*, 481 So. 2d 380, 385 (1985) (“[T]he insurance company is entitled to a reduction to the extent, if any, of the reasonable salvage value of the wiring and tubing after it was taken from the refrigeration equipment.”). The Montana Supreme Court recognized salvage value when the devalued property had already been sold for salvage at the time the restitution is being calculated. See *In re T.M.R.*, 144 P.3d 809, 813 (Mont. 2000) (“When stolen property is recovered and sold for its salvage value, as in this case, the restitution should be reduced by the amount received.”). The Eleventh Circuit echoed this approach in *United States v. Wasielak*, finding “[t]he total restitution value is lower than the [statute’s]

‘intended loss’ because the restitution amount is based upon actual loss, as opposed to intended loss. The figure thus includes several set-offs, including the salvage value of the recovered ATVs.” 139 Fed.Appx. 187, 193 n.9 (11th Cir. 2005).

¶ 17 Even to the small extent these few cases might aid Mendiola’s arguments, it remains important to recognize the deference to the trial court’s discretion in these examples. *See, e.g. Wasielak*, 139 Fed.Appx. at 194 (“[W]e conclude that the district court did not abuse its discretion as to the amount of restitution. When ordering restitution in a case involving a conspiracy, a district court may order restitution for acts of related conduct for which the defendant was not convicted.” (internal quotation marks and citation omitted)); *Gendron*, 747 N.W.2d at 129 (“While the court could have considered a salvage value, we cannot say the district court abused its discretion by not doing so.”). The purpose of restitution is, in part, to “improve the ability of the system to fully compensate crime victims. . . .” PL 15–46, § 2. Mendiola offered no evidence the victims obtained any salvage value from the copper wire. Therefore, we cannot say the trial court abused its discretion by declining to take into account the salvage value of the copper wire, and instead awarding restitution in the amount of the replacement cost of the damaged wire.

3. Error in Order

¶ 18 It is undisputed that there is a typographical error in the trial court’s restitution order, making Mendiola’s restitution payment \$1,835.92 instead of \$1,834.92. This appears to be a clerical error. Therefore, while we decline to find in favor of Mendiola, we recognize this error should be addressed.

V. CONCLUSION

¶ 19 For the foregoing reasons, we AFFIRM the trial court imposition of restitution damages, but GRANT the trial court leave to amend its order to correct a typographical error.

SO ORDERED this 18th day of October, 2017.

/s/_____
ALEXANDRO C. CASTRO
Chief Justice

/s/_____
JOHN A. MANGLONA
Associate Justice

/s/_____
PERRY B. INOS
Associate Justice



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JUDGMENT

Defendant-Appellant Patrick Mendiola appeals the restitution order requiring him to pay \$1,835.92. For the reasons discussed in the accompanying opinion, the Court AFFIRMS the restitution order, but GRANTS the trial court leave to amend a clerical error in its order.

ENTERED this 18th day of October, 2017.

/s/ _____
NORA V. BORJA
Acting Clerk of the Supreme Court