

NOT DESIGNATED FOR PUBLICATION

No. 111,665

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

DAVID HEIM,
Appellant.

MEMORANDUM OPINION

Appeal from Reno District Court; TIMOTHY J. CHAMBERS, judge. Opinion filed March 27, 2015.
Affirmed.

Samuel Schtrer, of Kansas Appellate Defender Office, for appellant.

Keith E. Schroeder, district attorney, and *Derek Schmidt*, attorney general, for appellee.

Before MCANANY, P.J., ATCHESON, J., and HEBERT, S.J.

Per Curiam: Defendant David Heim appeals the Reno County District Court's order that he pay Kristina, his estranged wife, \$750 in restitution for damage done to the car she was driving when he intentionally rammed it with his vehicle. He contends Kristina's estimate of her repair costs furnished a legally insufficient basis for the award. We disagree, especially in light of recent Kansas Supreme Court authority governing the determination of restitution, and, therefore, affirm the district court's ruling.

Heim pleaded no contest to aggravated battery, a felony violation of K.S.A. 2014 Supp. 21-5413, and several counts of violating a protection from abuse order issued to

Kristina. The State dismissed other counts against Heim as part of a plea agreement. Heim received a controlling standard guidelines sentence of 13 months in prison for the aggravated battery and was a presumptive candidate for probation. The district court placed him on probation for 24 months. Aside from restitution, Heim doesn't challenge the disposition of the charges or the sentence he received.

At the restitution hearing in March 2014, Kristina testified that she got an estimate for the car repairs of several thousand dollars from a local body shop. Rather than have the work done there, Kristina had a friend repair the car. The friend did not take any money for the work. Kristina testified that she paid cash for the necessary parts at an area auto supply store. She estimated she spent between \$600 and \$800 for the parts. Kristina also testified she had medical expenses of \$803.50 for care she received as a result of injuries she suffered in the collision. Kristina produced documentation of the medical charges.

The district court ordered Heim to pay restitution to Kristina in the amount of \$803.50 for the medical expenses and \$750 for the repairs to the car. Heim has timely appealed and disputes the award for the car repairs.

At the outset, the State argues Heim waived his right to appeal the restitution amount as part of the plea agreement. The written agreement Heim signed includes a broad but not unlimited waiver of appeal. The agreement reserves to Heim the right to appeal some aspects of his sentence without specifically addressing restitution. The agreement also states that restitution is disputed and likely will require a hearing with the district court to resolve. Neither at the plea hearing nor at the sentencing did the district court undertake any detailed discussion of the appeal waiver or secure a personal affirmation of the waiver from Heim. Under the circumstances, we find sufficient ambiguity about the adequacy of the waiver with respect to restitution that we choose not to resolve the appeal on that basis.

Turning to the merits, Heim contends the district court's restitution award amounts to a legally impermissible guess. We don't see it that way.

As provided in K.S.A. 2014 Supp. 21-6607(c)(2), a district court placing a defendant on probation should order that he or she pay restitution to the victim for the damage or loss caused by the crime. Here, there is no dispute as to the causal connection between Heim's crime of conviction and the loss to be compensated. The only question is the proper amount of restitution—a matter entrusted to the district court's sound discretion based on the facts and circumstances of a given case. *State v. Hall*, 297 Kan. 709, 714, 304 P.3d 677 (2013). A district court exceeds that discretion if it rules in a way no reasonable judicial officer would under the circumstances, if it ignores controlling facts or relies on unproven factual representations, or if it acts outside the legal framework appropriate to the issue. See *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106, cert. denied 134 S. Ct. 162 (2013); *State v. Ward*, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011), cert. denied 132 S. Ct. 1594 (2012).

In *Hall* and *State v. Hand*, 297 Kan. 734, 737-39, 304 P.3d 1234 (2013), the Kansas Supreme Court thoroughly reviewed the standards for fashioning restitution awards for property loss or damage. The court essentially recognized that so long as the amount is "based on reliable evidence" and "yields a defensible restitution figure," the district court's discretion as to the amount should be respected on appeal. *Hall*, 297 Kan. at 714. Restitution is intended to fairly compensate crime victims and to further the rehabilitation of defendants by instilling in them some sense of the costs their wrongdoing has inflicted. See *State v. Cox*, 30 Kan. App. 2d 407, 409, 42 P.3d 182 (2002); *State v. Hinckley*, 13 Kan. App. 2d 417, 419, 777 P.2d 857 (1989). The process, however, is not intended to devolve into extended litigation fought over penny-precise amounts. See *State v. Pullins*, No. 106,527, 2012 WL 4121116, at *2 (Kan. App. 2012)

(unpublished opinion) (restitution determination should not be "fight over nickels and dimes," and district court acts within its discretion so long as "the amount ordered has support in the evidence"), *rev. denied* 297 Kan. 1254 (2013). The defendant, as a criminal wrongdoer, has to demonstrate a substantial deviation from the evidence or some other material error to upset the amount of restitution a district court orders.

Here, Heim presented no evidence that Kristina's estimate as to what she spent on car parts and other materials for the repairs was somehow unreasonable. He has not shown the actual damage to the car differed from Kristina's description or that she had work done unrelated to the collision. Nor has he shown the required parts should have cost less than \$800, the upper range of the estimate. More broadly, Heim did not show Kristina to be an unreliable or untrustworthy witness such that her estimate should have been doubted. Under the circumstances, the district court did not abuse its discretion in awarding restitution toward the upper end of Kristina's estimate—an amount exceeding the low end of the range by only \$150. The award, therefore, plainly reflects "a defensible restitution figure" supported by reliable evidence. Accordingly, the award comports with the district court's sound discretion in setting restitution.

That would not be true had the district court ordered a restitution amount of more than \$800, thereby exceeding Kristina's estimate and the record evidence. And we suppose that might not be true if a victim offered an exceptionally broad estimate in which the upper end exceeded the lower by a factor of 5 or 10 and the difference amounted to thousands of dollars—a district court would venture into troublesome territory with a restitution order high in that range based on nothing more than the estimate itself. But those circumstances aren't before us. In this case, the district court made a fair call.

Affirmed.