**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 12, 2018**

**Sheila T. Reiff**
**Clerk of Court of Appeals**



**Appeal No. 2017AP257-CR** **Cir. Ct. No. 2015CF2673**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT IV**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANGELA C. NELLEN,**

**DEFENDANT-APPELLANT.**

APPEAL from an order of the circuit court for Dane County: ELLEN K. BERZ, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Angela Nellen appeals two elements of the circuit court's order of restitution following Nellen's conviction on two counts of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

theft of movable property. First, Nellen argues that the court erroneously exercised its discretion in ordering $90,000 in restitution to the owners of a coin collection that Nellen stole, because there was insufficient evidence presented at the restitution hearing to support a finding that the coin collection had this value. Second, Nellen argues that the circuit court lacked statutory authority to order restitution for a third change of locks to the victims' house, because the State failed to establish a causal nexus between the thefts by Nellen and the cost to replace the victims' locks for a third time. For the following reasons, I reject both of Nellen's arguments and accordingly affirm.

¶2 Nellen was convicted of two counts of theft of movable property stemming from an incident in which Nellen stole items from the residence of her employer and neighbor. Thefts by Nellen occurred after the victims, K.K. and G.K., hired Nellen to assist them in reorganizing and remodeling their house. Nellen introduced K.K. to Nellen's then-roommate, Thomas Gannon. K.K. agreed to allow Gannon to help on the project as well. At some point, Gannon informed K.K. that Nellen had stolen items from the house, including a collection of old coins.

¶3 After confirming that items were missing, K.K. reported the theft to the police. When questioned by police, Nellen admitted to taking items from K.K. and G.K. Nellen entered pleas of guilty to two counts of misdemeanor theft.[2] The circuit court ordered Nellen to pay the victims a total of $91,525.50 in restitution.

[2] The State charged Thomas Gannon separately from Nellen for stealing from the same victims.

Nellen objects to the majority of that amount: $90,000 for the coin collection, and $168 for a third change to locks at the victims' residence.

¶4 At the restitution hearing, the victims' daughter, M.C., testified to the approximate value of the stolen coins. M.C. testified that there had been 30 to 50 coins in the collection, and that the values of individual coins ranged from $3,000 to $15,000. M.C. testified that she could provide only estimates because her father, who maintained the collection, had developed dementia. The court decided to rely on the lowest end of each of M.C.'s estimates to arrive at the restitution figure of $90,000 (30 x $3,000).

¶5 Victim K.K. testified at the restitution hearing that she changed the locks on the residence three times following the thefts by Nellen and Gannon. The first locks change took place a few weeks after K.K. reported the theft to the police. The second locks change took place a couple of weeks later. The third locks change took place two to three weeks later, after Gannon moved out of the residence.[3] The first two locks changes cost only $50 each, because the victims changed only two of the locks on the house and the victims purchased the new locks from a hardware store. However, the third locks change cost $168, because it included the two locks on the residence as well as the lock on the garage door and for this locks change the victims hired a locksmith. The circuit court ordered Nellen to pay restitution for all three locks changes.

¶6 On appeal, Nellen argues that: (1) the circuit court erroneously exercised its discretion in ordering restitution in the amount of $90,000 for the

[3] Sometime after Nellen introduced Gannon to the victims, Gannon briefly lived with the victims.

stolen coins, because there was insufficient evidence to prove that the collection was worth this amount; and (2) the court lacked statutory authority to order Nellen to pay restitution in the amount of $168, because there is no causal nexus between Nellen's criminal conduct and the third locks change.

¶7 The discretionary decision of a circuit court to set restitution at a particular amount will be disturbed only if the court has erroneously exercised its discretion. ***State v. Gibson***, 2012 WI App 103, ¶8, 344 Wis. 2d 220, 822 N.W.2d 500. This means that reversal is appropriate "only if the circuit court applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts." ***State v. Canady***, 2000 WI App 87, ¶6, 234 Wis. 2d 261, 610 N.W.2d 147.

¶8 As pertinent here, when setting restitution involving loss of property resulting from a crime, the court has several options, including requiring the defendant to pay "the reasonable replacement cost" of the property. *See* WIS. STAT. § 973.20(2); *see also* ***State v. Kennedy***, 190 Wis. 2d 252, 259, 261, 528 N.W.2d 9 (Ct. App. 1994) (discussing the wide range of options available in determining restitution, which allow the court to consider the particular facts in each case and fashion an appropriate sentence to fit the circumstances). In determining the "reasonable replacement cost" of stolen property, the court has the discretion to "accept and reject evidence and to give accepted evidence such weight as it desires." ***State v. Boffer***, 158 Wis. 2d 655, 663, 462 N.W.2d 906 (Ct. App. 1990); *see also* ***State v. Harris***, 2010 WI 79, ¶66, 326 Wis. 2d 685, 786 N.W.2d 409 (review of sentencing decisions is "limited to determining if the circuit court erroneously exercised its discretion. Discretion is erroneously exercised when a sentencing court actually relies on clearly irrelevant or improper

factors, and the defendant bears the burden of proving such reliance by clear and convincing evidence.").

¶9 As summarized above, the circuit court's calculation of $90,000 gave Nellen the benefit of the low end of M.C.'s testimony. M.C.'s testimony was based on her memory of seeing the coins at least once in the previous 10 years and what she recalled from her father teaching her about the coins when she was a child. M.C. acknowledged that she could not recall the specifics of each coin. Based on what she could recall about particular coins, M.C. conducted research in an attempt to determine the value of the types of coins that she recalled. M.C. testified that her information sources included what she found in searching on Google and eBay.

¶10 Nellen argues that this testimony amounted to mere "guesswork" and did not establish "to a *reasonable certainty* that there were 30 missing silver coins valued at $3,000 each." However, Nellen fails to support this argument. On cross-examination of M.C., Nellen's attorney did not present a compelling challenge to the extent or quality of M.C.'s research into the value of the coins. For example, Nellen's attorney did not ask M.C. what websites, if any, aside from Google and eBay she might have consulted, nor why she believed that any particular website she visited could have been reliable or unreliable. In short, Nellen fails to persuade me that the record demonstrates that M.C. did not provide the circuit court with adequate foundational testimony to establish that she could give reasonable estimates of both the number and the values of the coins.

¶11 For these reasons, I conclude that the $90,000 component of the restitution order is grounded in a logical interpretation of the evidence presented to the court.

¶12 Turning to Nellen's argument that the State failed to establish a causal nexus between the theft and the damage sustained by the victim in the form of the third locks change, she argues that the court should attribute the cost of the third locks changes solely to conduct by Gannon and could not attribute the cost to Nellen.

¶13 Whether a restitution order comports with the statute is subject to de novo review. ***State v. Rash***, 2003 WI App 32, ¶5, 260 Wis. 2d 369, 659 N.W.2d 189 (citations omitted).

¶14 There must be a causal nexus between the defendant's conduct and the harm suffered by the victim to which the restitution is addressed. *See* ***State v. Hoseman***, 2011 WI App 88, ¶16, 334 Wis. 2d 415, 799 N.W.2d 479. In applying this rule, I am directed to bear in mind that the primary purpose of restitution is to compensate the victim, and accordingly construe the restitution statute "'broadly and liberally in order to allow victims to recover their losses as a result of a defendant's criminal conduct.'" ***Canady***, 234 Wis. 2d 261, ¶8 (quoted source omitted). In order for there to be a causal nexus sufficient to support a restitution order, the defendant's criminal activity must have been a "substantial factor" in causing the harm that the restitution is aimed at addressing, which means that "'the defendant's criminal act set into motion events that resulted in the damage or injury.'" ***Hoseman***, 334 Wis. 2d 415, ¶26 (quoted source omitted). The court considers a defendant's "'entire course of conduct'" when determining restitution. ***Canady***, 234 Wis. 2d 261, ¶10 (quoted source omitted). There is no dispute as to the crimes for which Nellen was sentenced. *See* WIS. STAT. § 973.20(1g)(a) ("'[c]rime considered at sentencing' means any crime for which the defendant was convicted and any read-in crime.").

¶15 Nellen does not challenge restitution for either of the first two locks changes. Nor does she argue that the only justified lock change the third time around was for the garage lock, and that neither of the house locks needed to be changed a third time. Instead, her sole argument is narrow: a causal nexus is lacking because the only evidence before the court was that the third locks change resulted, not from the thefts for which Nellen was sentenced, but instead from the victims' concerns arising solely from their continued contact with Gannon after the State had already charged Nellen with the theft from the victims. It is undisputed that, during this time, Gannon alone continued to steal items from the victims and that the victims changed the locks for the third time only after Gannon moved out of the house. Nellen argues that it was the victims' continued relationship with Gannon, and his continued criminal conduct against them, that required the third locks change.

¶16 However, it is undisputed that Nellen stole items from both the house and the garage. Nellen fails to explain why it was not appropriate for the court to hold her responsible for the cost of replacing locks that arose out of her conduct in stealing from both locations. The fact that Gannon continued to steal from the victims, after he and Nellen had done so together earlier, does not change the fact that Nellen stole from the garage, creating a need for the garage lock change. This is sufficient to hold Nellen responsible for the cost of the garage lock change, defeating the only argument that Nellen makes on this issue.

¶17 In fact, based on the limited causal nexus argument that Nellen makes, I do not think it is necessary that there be proof that Nellen stole from the garage. By stealing from the house, while working for the residents of the house, she created a situation in which residents would reasonably feel a need to change all locks associated with the residence to try to prevent a recurrence.

¶18 In any event, it does not matter that the third locks changes took place after Gannon stole on his own and after Nellen was charged, because it is sufficient that her criminal conduct was a "substantial factor" in causing the need to change the garage lock. *See* ***State v. Queever***, 2016 WI App 87, ¶¶21-22, 372 Wis. 2d 388, 887 N.W.2d 912 (holding that restitution for the expense the victim incurred to install a security system was proper because the court found that the defendant committed previous burglaries of the victims' house, which were "'related to'" the crime that was considered at sentencing) (quoted source omitted).

*By the Court*.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.