IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 16, 2013

STATE OF TENNESSEE v. DAVID ALLAN BOHANON[1]

Appeal from the Circuit Court for Robertson County
No. 2011CR608, 2011CR540 John H. Gasaway, III, Judge

No. M2012-02366-CCA-R3-CD Filed October 25, 2013

The Defendant-Appellant, David Allan Bohanon, entered guilty pleas to three counts of theft of property valued at $1,000 or more but less than $10,000, Class D felonies. See T.C.A. §§ 39-14-103, -105. Pursuant to the plea agreement, he received an effective three-year sentence to be served on community corrections. In a subsequent restitution hearing, the trial court also ordered him to pay a total of $16,575 in restitution at a rate of $200 per month. On appeal, the Defendant-Appellant argues that the trial court erred by setting an unreasonable amount in restitution based on the evidence presented at trial and his ability to pay. Upon review, we reverse the trial court's order of restitution and remand the case for a new restitution hearing.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

CAMILLE R. MCMULLEN, J., delivered the opinion of the court, in which ROGER A. PAGE, J., joined. D. KELLY THOMAS, JR., J., filed a separate concurring and dissenting opinion.

Roger E. Nell, District Public Defender (on appeal), Clarksville, Tennessee; Ann M. Kroeger, Assistant District Public Defender (at trial), Springfield, Tennessee, for the Defendant-Appellant, David Allan Bohanon.

Robert E. Cooper, Jr., Attorney General and Reporter; Meredith DeVault, Senior Counsel; John Wesley Carney Jr., District Attorney General; and Jason Christian White, Assistant District Attorney General, for the Appellee, State of Tennessee.

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[1] We note that the indictments in this case spell the Defendant-Appellant's name as "David Allan Bohanon." It is spelled "David Allen Bohannon" elsewhere in the record. We use the spelling "Bohanon" as reflected in the indictments.

OPINION

Guilty Plea Hearing. On February 24, 2012, the Defendant-Appellant entered guilty pleas to two counts of theft of property valued at $1,000 or more in case number 2011-CR-540 and one count of theft of property valued at $1,000 or more in case number 2011-CR-608. Pursuant to the plea agreement, he received an effective sentence of three years on community corrections, with credit for 87 days. The underlying facts for the thefts were not specified at the plea hearing. The amount of restitution owed was to be determined at a later hearing.

Restitution Hearing. At the September 28, 2012 restitution hearing, James Cook testified that he was the victim in case number 2011-CR-608 of theft of property occurring on April 11, 2011. When he went to his barn that day, he discovered that the tractor inside was missing two shanks, or metal blades, from its V-ripper, which is a claw-like device in the back of a tractor. Before the shanks could be recovered, they had been crushed into scrap metal. He valued the two shanks at $250 each. A gas-powered garden tiller was also missing and was never recovered. He estimated the worth of the tiller to be "$125 probably" because it had been used three or four times to till plant beds. Based on the testimony regarding the missing scrap metal and farm equipment, the trial court determined that $575 in restitution was owed to Mr. Cook.

Thomas Abernathy testified that he was the victim in case number 2011-CR-540 of theft of property in April of 2011 of items that had been locked in his barn. He stated that an ABT brand go-kart was taken. He had paid "close to $2,500" for the go-kart, which he had purchased for his son in 2004 or 2005. He said the vehicle had a broken axle and "was practically new" at the time it was stolen. Apart from the broken axle, the go-kart was fully functioning and "worth an easy 2,000, because it had the big engine and all on it. It was one of the expensive ones."

Mr. Abernathy also reported missing an "an industrial size red tool box full of assorted tools." The tool box itself was approximately eight to ten years old and was originally purchased for $2,300. He estimated that at the time of theft, the tool box "would probably be well over $1,000." Taking into account depreciation, he further stated the cumulative value of all the tools inside the tool box to be worth $10,000 at the time of theft. He could not recollect each, tool but he reported having had "air wrenches; air sockets; impact wrenches . . . [e]verything that a mechanic would need . . . to perform any maintenance on any vehicle."

A .25 caliber pistol, valued at "about $200," an air compressor, valued at around $800, and a 60,000 watt electronic generator were also reported as missing. The generator had

been purchased from Home Depot in the early 1990's for $5,000. Mr. Abernathy described the generator to be in "excellent condition" and worth about $2,500 at the time of theft. The trial court ordered $16,000 in restitution to be paid to Mr. Abernathy.

The Defendant-Appellant testified that he was currently unemployed. He had last worked three years ago at Robert Orr SYSCO Foods in Davidson County. He had filed for disability benefits, though that case was pending. He said his disability was due to his spine, degenerated kneecaps, and vision. He lived with his long-term girlfriend, who owned the house in which they lived. He reported having electricity, water, and phone bills. He did not have any source of income. He reported that he was currently in debt because of his court costs and fines from these cases. He made what little payments he could toward court costs, without help from his girlfriend. In terms of employment, he did small odd jobs such as cutting grass, though the work was not steady. He estimated earning about $1,000 in 2012 from odd jobs and considered it to be difficult at that time to pay restitution. He also testified that he was looking for part-time work.

On cross-examination, the Defendant-Appellant said he had serious health problems for four years. He stated that he had injured his spine in a car accident and had received therapy and spine injections. He lived with his girlfriend, Rebecca Winkler, and their two children, who were 20 and 21. He also lived with an infant grandchild. His girlfriend received food stamps and paid the electric bill, and he usually paid the water bill. He earned $150 every two weeks from cutting grass for three people in the neighborhood. He had applied for part-time employment the previous year and the day before the restitution hearing. He had trouble finding work because "nobody wants to hire somebody part-time" and because he had broken his leg two months ago. He said that it was no longer grass-cutting season and that he had last cut grass two weeks ago.

At the conclusion of the restitution hearing, the trial court made the following determination:

> The Court finds, based on the evidence presented, that the actual damages sustained by Mr. Cook, according to this testimony, is $575. And the Court finds that the actual damages . . . sustained by Mr. Abernathy, based on his [testimony], and the Court is [required] to consider the age of the property, its current market value, and I have considered his testimony regarding the go cart [sic] with a broken axle that was seven years old, the tool box that was bought sometime in the 90's, he wasn't sure when, the tools inside the box, which were unspecified, the pistol, the air compressor and the generator, and [the] Court finds that the total damages sustained . . . is $16,000.

> As far as payment is concerned, the Court finds Mr. [Bohanon] is currently indigent, however . . . that matter may change from time to time so I'm ordering him to pay a monthly payment through the clerk's office in the amount of $200 a month. But he is to provide the probation officer no less than the names of three different employers that he has applied [to] for employment; on a weekly basis a minimum of three. And if he becomes employed then I want the lawyers to discuss whether or not his abilities [have] increased; and if they can agree on something[,] fine, if not[,] come to me and I'll take a look at it, because I might change this. That's all. Thank you.

On October 3, 2012, the court entered a "Restitution Order" requiring the Defendant-Appellant to pay $575 to Mr. Cook and $16,000 to Mr. Abernathy with the total amount of restitution owed to be $16,575. The Defendant-Appellant was ordered to pay restitution to the Robertson County Circuit Court Clerk's Office at a rate of $200 per month. Furthermore, the court ordered the Defendant-Appellant to continue to seek stable employment and to provide proof to his community corrections officer that he applied to three different employers each week.

It is from this order that the Defendant-Appellant appeals.

ANALYSIS

The sole issue presented for our review is whether the trial court erred in ordering the Defendant-Appellant to pay $16,575 in restitution. Specifically, the Defendant-Appellant argues that the total restitution amount is unreasonable given the evidence produced at trial and his ability to pay. In response, the State contends that the trial court properly determined a reasonable amount of restitution after considering the Defendant-Appellant's ability to pay and the purposes and principles of sentencing. Moreover, the State asserts that the amount in restitution is subject to change upon a petition to the sentencing court. Upon review, we reverse the trial court's order regarding restitution and remand this matter for further proceedings consistent with this opinion.

Where the restitution order is separate from and subsequent to the judgment of conviction, as in this case, we must first address whether jurisdiction is proper. See State v. Keisha M. Howard, No. E2011-00598-CCA-R3-CD, 2012 WL 3064653, at *8-9 (Tenn. Crim. App. July 30, 2012); see also State v. William Chandler Daniels, No. E2009-02172-CCA-R3-CD, 2010 WL 5343776, at *1-2 (Tenn. Crim. App. Dec. 23, 2010). Pursuant to Tennessee Rule of Appellate Procedure 3(b), a convicted criminal defendant "has a right to appeal when the trial court has entered a final judgment of conviction." State v. Comer, 278 S.W.3d 758, 760-61 (Tenn. Crim. App. 2008) (internal quotation marks omitted). In other words, "Rule 3 appeals . . . may be taken only from final judgments." State v. Maddox, 603

S.W.2d 740, 741 (Tenn. Crim. App. 1980); see also T.C.A. § 16-5-108(a)(1) ("The jurisdiction of the court of criminal appeals shall be appellate only, and shall extend to review of the final judgments of trial courts in . . . [c]riminal cases, both felony and misdemeanor."). The Tennessee Supreme Court has held that "a judgment is final 'when it decides and disposes of the whole merits of the case leaving nothing for the further judgment of the court.'" Richardson v. Tenn. Bd. of Dentistry, 913 S.W.2d 446, 460 (Tenn. 1995) (quoting Saunders v. Metro. Gov't of Nashville & Davidson Cnty., 383 S.W.2d 28, 31 (Tenn. 1964)).

In recent years, this court has issued varying opinions regarding whether it has jurisdiction to review cases where the judgment of conviction did not specify the amount of restitution owed or the payment schedule. Compare Comer, 278 S.W.3d at 760 (dismissing the appeal for lack of jurisdiction where the restitution order stated "Payment Schedule shall be set by the Court upon completion of Appeal Process" and was therefore "functionally incomplete"), and State v. Rodney Northern, No. E2009-01969-CCA-R3-CD, 2010 WL 2852288, at *2 (Tenn. Crim. App. July 21, 2010) (concluding that this court lacked jurisdiction where the judgment of conviction stated restitution was "TBD @ hearing" and the subsequent restitution order deferred establishing a payment schedule to the probation officer), with State v. Wendell Gary Gibson, No. M2001-01430-CCA-R3-CD, 2002 WL 1358711 (Tenn. Crim. App. June 24, 2002), State v. Donna Harvey, No. E2009-01945-CCA-R3-CD, 2010 WL 4527013 (Tenn. Crim. App. Nov. 9, 2010), and State v. John Tyler Gilley, No. E2011-01627-CCA-R3-CD, 2012 WL 4358731 (Tenn. Crim. App. Sept. 25, 2012) (all three cases exercising appellate jurisdiction without discussion where defendant pled guilty and amount of restitution owed and payment schedule were determined at a subsequent hearing).

The facts in Comer and in Rodney Northern indicate that this court declined to extend jurisdiction to cases where the resulting restitution order expressly contemplated further action and was therefore functionally deficient. In Comer, the restitution order anticipated that the trial court would set the payment schedule after the appeals process, thereby rendering the judgment incomplete. 278 S.W.3d at 760. In Rodney Northern, the subsequent restitution order did not include payment terms as statutorily required and deferred establishing a payment schedule to the probation officer. No. E2009-01969-CCA-R3-CD, 2010 WL 2852288, at *4; T.C.A. § 40-35-304(c). Therefore, the restitution orders in Comer and in Rodney Northern were procedurally flawed and lacking in finality. In the instant case, by contrast, nothing in the record indicates that the trial court did not "decide[] and dispose[] of the whole merits of the case leaving nothing for the further judgment of the court" after entering its restitution order. Richardson, 913 S.W.2d at 460. Here, the Defendant-Appellant entered guilty pleas on February 24, 2012, to three counts of theft of property valued at $1,000 or more but less than $10,000 in case numbers 2011-CR-608 and 2011-CR-540. Each of the three judgments of conviction expressly anticipated further trial court action

by stating, "Restitution hearing set for April 27, 2012 to determine the restitution owed." After the restitution hearing, the trial court in the instant case entered its restitution order on October 3, 2012, ordering "that the restitution in 2011-cr-608 [sic] shall be $575.00 payable to James Cook . . . and the restitution in 2011-cr-540 [sic] shall be $16,000.00 payable to Thomas Abernathy." The trial court also specified the payment schedule to be $200.00 a month. Here, similar to the facts in Donna Harvey, No. E2009-01945-CCA-R3-CD, 2010 WL 4527013, and in Keisha M. Howard, No. E2011-00598-CCA-R3-CD, 2012 WL 3064653, the judgments of conviction were the result of a guilty plea agreement, which resolved all sentencing issues other than the amount of restitution owed and the payment schedule. Accordingly, we conclude that the judgments of conviction and the resulting restitution order in the instant case constitute a "final judgment." See also William Chander Daniels, No. E2009-02172-CCA-R3-CD, 2010 WL 5343776, at *2 ("[B]etween the judgment of conviction, which references a later restitution hearing, and the order emanating from the hearing, the record contains a 'final judgment' and provides a sufficient basis to invoke our jurisdiction."). Having concluded that we have a final judgment appealable pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure, we now review the appeal on its merits.

Previously, this court conducted a de novo review with a presumption of correctness whenever a defendant challenged the validity and amount of restitution ordered. State v. Johnson, 968 S.W.2d 883, 884 (Tenn. Crim. App. 1997) (citing T.C.A. § 40-35-401(d) (1990)). In 2012, the Tennessee Supreme Court concluded that a trial court's sentencing determinations in felony cases should be reviewed under "an abuse of discretion standard of review, granting a presumption of reasonableness to within-range sentencing decisions that reflect a proper application of the purposes and principles of our Sentencing Act." State v. Bise, 380 S.W.3d 682, 707 (Tenn. 2012). Shortly thereafter, our supreme court applied the abuse of discretion standard to "questions related to probation or any other alternative sentence." State v. Caudle, 388 S.W.3d 273, 278-79 (Tenn. 2012). An alternative sentence is "any sentence that does not involve complete confinement." See generally State v. Fields, 40 S.W.3d 435 (Tenn. 2001). Tennessee Code Annotated section 40-35-104 considers "[a] sentence to a community based alternative to incarceration" and "[p]ayment of restitution to the victim or victims" to be "sentencing alternatives." T.C.A. § 40-35-104(c)(2), (9) (2010). The Tennessee Supreme Court has yet to address explicitly what impact, if any, its decision in Bise has on our review of restitution orders. However, in Bise, the Court stated that "when the 2005 amendments vested the trial court with broad discretionary authority in the imposition of sentences, de novo appellate review and the 'presumption of correctness' ceased to be relevant." 380 S.W.3d at 708. Accordingly, based upon Bise and Caudle, we conclude that the appropriate standard of review for restitution orders is the abuse of discretion standard with a presumption of reasonableness. A finding of abuse of discretion "'reflects that the trial court's logic and reasoning was improper when viewed in light of the

factual circumstances and relevant legal principles involved in a particular case.'" State v. Shaffer, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting State v. Moore, 6 S.W.3d 235, 242 (Tenn. 1999)). Furthermore, the defendant bears the burden of demonstrating the impropriety of the sentence. See T.C.A. § 40-35-401, Sentencing Comm'n Cmts; State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

Restitution is mandatory in all theft convictions. See T.C.A. § 40-20-116(a) (providing that the trial court order restitution "[w]henever a felon is convicted of stealing or feloniously taking or receiving property, or defrauding another of property"); see also State v. Ngoc Dien Nguyen, No. M2012-00549-CCA-R3-CD, 2012 WL 5378089, at *3 (Tenn. Crim. App. Oct. 26, 2012). In addition, one goal of the community corrections program is to "[p]romote accountability of offenders to their communities by requiring financial restitution to victims of crimes." T.C.A. § 40-36-104(2) (2010). "The purpose of restitution is not only to compensate the victim but also to punish and rehabilitate the guilty." Johnson, 968 S.W.2d at 885. In Tennessee, sentencing courts are encouraged to impose restitution where appropriate. T.C.A. § 40-35-102(3)(D); T.C.A. § 40-35-103(6). However, trial courts "are without inherent power or authority to order payment of restitution except as is derived from legislative enactment." State v. Alford, 970 S.W.2d 944, 945 (Tenn. 1998). Tennessee Code Annotated section 40-35-304 establishes the procedure for imposing restitution as a condition of probation as well as for other alternative sentences such as community corrections. T.C.A. § 40-35-304(a), (g) (2010). Our law applies the procedure of section 40-35-304 to all restitution orders, even where restitution is mandated for theft convictions under section 40-20-116(a). T.C.A. § 40-35-304(g) (2010); see also State v. Timothy Leon McKenzie, No. M2010-01168-CCA-R3-CD, 2012 WL 112555, at *8 (Tenn. Crim. App. Jan. 11, 2012) (citing William Chandler Daniels, No. E2009-02172-CCA-R3-CD, 2010 WL 5343776).

While there is no set formula for determining restitution, Johnson, 968 S.W.2d at 886, above all, the restitution amount must be reasonable. State v. Smith, 898 S.W.2d 742, 747 (Tenn. Crim. App. 1994). When ordering restitution, the trial court must base the amount on the pecuniary loss to the victim. T.C.A. § 40-35-304(b) (2010); Smith, 898 S.W.2d at 747. However, the amount of restitution ordered "does not have to equal or mirror the victim's precise pecuniary loss." State v. Mathes, 114 S.W.3d 915, 919 (Tenn. 2003) (quoting Smith, 898 S.W.2d at 747). "Pecuniary loss" is statutorily defined as "[a]ll special damages, but not general damages, as substantiated by evidence in the record or as agreed to by the defendant." T.C.A. § 40-35-304(e)(1) (2010). "Special damages" are "the actual, but not the necessary, result of the injury complained of, and which in fact follow it as a natural and proximate consequence in the particular case . . . ." State v. Lewis, 917 S.W.2d 251, 255 (Tenn. Crim. App. 1995) (quoting Black's Law Dictionary 392 (6th ed. 1990)). Tennessee law mandates that "[i]n determining the amount and method of payment or other restitution, the court shall consider the financial resources and future ability of the defendant

to pay or perform." T.C.A. § 40-35-304(d) (2010). This is because "[a]n order of restitution which obviously cannot be fulfilled serves no purpose for the appellant or the victim." Johnson, 968 S.W.2d at 886. At the time of sentencing, the court must specify "the amount and time of payment or other restitution to the victim and may permit payment or performance in installments." T.C.A. § 40-35-304(c) (2010). Where a defendant is sentenced to community corrections, as in this case, "any payment or performance schedule established by the court shall not extend beyond the expiration date [of the sentence imposed]." Id. § 40-35-304(g)(2) (2010). In other words, the court must set a restitution amount that the defendant can reasonably pay within the time that he will be under the trial court's jurisdiction. Smith, 898 S.W.2d at 747. Upon expiration of the payment period, if the defendant has failed to pay restitution as ordered, any unpaid portion may be converted to a civil judgment. T.C.A. § 40-35-304(h)(1); State v. Bottoms, 87 S.W.3d 95, 108 (Tenn. Crim. App. 2001).

When determining the proper restitution amount, the trial court "must ascertain both the amount of the victim's loss and the amount which the defendant can reasonably be expected to pay." Bottoms, 87 S.W.3d at 108. We review the trial court's decision to order $16,575.00 in restitution for abuse of discretion with a presumption of reasonableness. "A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party." State v. Phelps, 329 S.W.3d 436, 443 (Tenn. 2010). We first consider whether the trial court erred by setting an unreasonable amount of restitution based on the evidence produced at trial.

A trial court's finding of pecuniary loss must be "substantiated by evidence in the record." T.C.A. § 40-35-304(e)(1) (2010). A victim seeking restitution must present sufficient evidence so the trial court can make a reasonable, reliable determination as to the amount of the pecuniary loss. Bottoms, 87 S.W.3d at 108-109. Though the strict rules of damages are somewhat relaxed when determining the amount of restitution, the burden of proof should not drop far below that required in civil courts. Id. While a victim's testimony alone may be sufficient to establish special damages for purposes of restitution, general statements regarding the amount of loss without explanation as to how the value was determined are insufficient. State v. David Robert Blevins, No. E2006-00830-CCA-R3-CD, 2007 WL 1153122, at *8 (Tenn. Crim. App. Apr. 19, 2007); see also Wendell Gary Gibson, No. M2001-01430-CCA-R3-CD, 2002 WL 1358711, at *3-4 (reversing and remanding the trial court's restitution order where the victim made conclusory statements regarding the value of several stolen items without explanation, including tools which were unspecified in number and type).

Here, the State's proof consisted solely of testimony from the victims. Based on Mr. Cook's testimony of two missing shanks valued at $250 each and a gas-powered garden tiller

valued at $125, the trial court concluded the actual damages to be $575 and ordered that amount to be paid to Mr. Cook in restitution. Mr. Abernathy testified to the loss of various items and reported their value based on depreciation, as represented in the following table:

Go-kart	$2,000.00
Tool box	$1,000.00
Cumulative value of missing tools	$10,000.00
.25 caliber pistol	$200.00
Air compressor	$800.00
Electric generator	$2,500.00
TOTAL	$16,500.00

The record shows that the trial court considered the age of the property and its market value at the time of the theft and ordered $16,500 in restitution. Based upon our review of the record, we conclude that there was insufficient evidence to determine Mr. Abernathy's pecuniary loss as to the stolen tools. Initially, he valued the stolen tool box and the tools inside to be $50,000. He could not "recollect each and every tool" though he reported the tools to be "expensive" and "[e]verything that a mechanic would need . . . to perform any maintenance on any vehicle." The trial court noted in its findings that "the tools inside the box . . . were unspecified." We reiterate that a trial court's finding of pecuniary loss must be substantiated by the record. Furthermore, general statements as to loss without explanation as to value are insufficient. Accordingly, we cannot conclude that the trial court was able to make a reasonable, reliable determination regarding the amount of the pecuniary loss as to the stolen tools for purposes of restitution. T.C.A. § 40-35-304(e)(1) (2010); Bottoms, 87 S.W.3d at 108-109. As for the other stolen items reported by Mr. Cook and Mr. Abernathy, we conclude that the proof was sufficient to support the trial court's determinations as to the amount of each victim's loss.[2]

We now consider whether the trial court erred by ordering an unreasonable amount of restitution given the Defendant-Appellant's ability to pay. As previously stated, when establishing the proper amount in restitution owed, the trial court should base the figure on what the defendant can reasonably be expected to pay within the time that he is under the jurisdiction of the trial court. T.C.A. § 40-35-304(d) (2010); Smith, 898 S.W.2d at 747. Furthermore, the payment schedule is not to exceed the term of the sentence imposed.

[2] No additional testimony should be required from Mr. Cook.

T.C.A. § 40-35-304(c), (g)(2) (2010); see also State v. Daniel Lee Cook, No. M2004-02099-CCA-R3-CD, 2005 WL 1931401, at *4 (Tenn. Crim. App. Aug. 10, 2005) (concluding that there was no way the appellant could pay $9,000 in restitution at a rate of $150 per month during a sentence of eleven months and twenty-nine days). Here, the Defendant-Appellant received an effective three-year sentence, and the trial court ordered him to pay $200 per month to satisfy the $16,575 in restitution owed. The State conceded that the court "did not anticipate that the defendant could provide total restitution in three years at $200 per month." Upon review, we conclude that the trial court established an unreasonable amount of restitution based on the Defendant-Appellant's ability to pay. Moreover, we conclude that the amount of restitution ordered is constrained by the sentence imposed. See, e.g., John Tyler Gilley, No. E2011-01627-CCA-R3-CD, 2012 WL 4358731, at *5 (concluding that $9,370 at a rate of $90 per month was an improper amount of restitution to be paid during four years of probation). Under our law, the trial court has the discretion to establish a reasonable amount of restitution based on the victim's pecuniary loss in addition to the defendant's ability to pay. T.C.A. § 40-35-304(b), (d); Bottoms, 87 S.W.3d at 108. The record here, however, shows that the Defendant-Appellant had no viable source of income at the time of the hearing. Given the proof regarding the Defendant-Appellant's health condition, there was also little to no proof supporting his future ability to pay. While it is true that any unpaid portion of court-ordered restitution may be converted to a civil judgment, the amount ordered in the first place must be reasonable and in accordance with statutory requirements. T.C.A. § 40-35-304(h)(1); Smith, 898 S.W.2d at 747. Because the initial amount ordered by the court did not account for the Defendant-Appellant's ability to pay, we cannot conclude that it was reasonable as required by law. Accordingly, we reverse the restitution order of the trial court and remand for a new restitution hearing.

CONCLUSION

Upon review, we reverse the trial court's restitution order, and we remand the case for reconsideration as to Mr. Abernathy's pecuniary loss regarding the tools and the imposed amount of restitution.

CAMILLE R. McMULLEN, JUDGE