IN THE COURT OF APPEALS OF THE STATE OF ALASKA

CLAYTON ELMER DAVIS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-13723 Trial Court No. 3PA-19-02771 CR SUMMARY DISPOSITION No. 0333 — July 26, 2023

Appeal from the District Court, Third Judicial District, Palmer, David Zwink, Judge.

Appearances: Monique E. Eniero, Attorney at Law, under contract with the Public Defender Agency, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Alex Engeriser, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Clayton Elmer Davis pleaded guilty to leaving the scene of an accident that resulted in damage to a vehicle.[1] As part of the plea agreement, Davis agreed to pay

[1] AS 28.35.050(b).

restitution in an amount to be determined following sentencing, although he retained the right to challenge the restitution amount.[2]

At a later telephonic restitution hearing, both the owner of the damaged vehicle, Monnique Tilrico, and Davis testified, and the primary dispute centered around the cause of the damage to Tilrico's vehicle. Tilrico testified that Davis rear-ended her 2001 Jeep Cherokee, and that she could no longer open the rear hatch. She testified that she took the vehicle in for an estimate, paid a deductible to her insurer (GEICO), and later received a payment from GEICO.[3] In contrast, Davis testified that Tilrico had backed her vehicle into his truck, but in any event, there was no significant damage to either vehicle.

Ultimately, the district court found that Davis had caused the damages and awarded restitution in the amount of $1,823 — $250 to Tilrico (for the deductible) and $1,573 to GEICO. On appeal, Davis raises two challenges to this restitution award.

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[2] We note that, here, Davis agreed to restitution as part of his plea agreement if the State proved he was responsible for the accident. Davis never argued that restitution was inappropriate because he was only convicted of leaving the scene of an accident that resulted in damage to a vehicle (as opposed to a crime related to causing the accident). *Cf. Peterson v. Anchorage*, 500 P.3d 314, 319, 323-24 (Alaska App. 2021) (recognizing that "the damages for which restitution is ordered must be caused by the criminal conduct for which the defendant was convicted," and reversing restitution judgment for losses caused by a traffic accident where defendant, convicted solely of driving with a revoked license, did not agree to pay restitution, and there was no indication in the record that the losses were caused by the defendant's criminal conduct, as opposed to her negligence).

[3] Tilrico testified that GEICO determined that the car was "totaled" and offered either to purchase the vehicle outright, or to pay her half the value of the vehicle if she retained it. Tilrico elected to keep the vehicle; thus, the restitution payment to GEICO reflected the lower amount that GEICO offered Tilrico — an amount that Tilrico testified was not enough to repair the hatch.

First, Davis argues that the district court improperly relied on hearsay statements — namely, GEICO's assessment — to establish the amount of restitution. We reject this claim. As the parties recognize, the rules of evidence do not generally apply during sentencing proceedings.[4] Furthermore, even assuming the rules did apply, it is well-understood that "hearsay evidence is admissible if there is no objection,"[5] and Davis did not object to the hearsay statements he now takes issue with on appeal.[6]

Notwithstanding his failure to object, Davis claims that the State cannot rely on GEICO's assessment because Davis disputed the assessment under oath at the restitution hearing and submitted to cross-examination — thus amounting to a testimonial denial and precluding the State from relying on hearsay statements.[7] Davis never raised this testimonial denial argument in the district court, and he must therefore

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[4] Alaska R. Evid. 101(c)(2).

[5] *Savely v. State*, 180 P.3d 961, 962 (Alaska App. 2008); *see also Duncan v. State*, 192 So. 3d 654, 657 (Fla. Dist. App. 2016) (noting that "[h]earsay evidence may be used to determine the amount of restitution if there is no objection to the evidence" (alteration in original) (citation omitted)).

[6] Davis's attorney did object to Tilrico's reliance on certain online insurance documents at the restitution hearing. But this objection was based solely on the grounds that there was no way for counsel "to verify the credibility" of the documents, and not on hearsay grounds. Moreover, Tilrico did not testify to any information from the documents regarding the amounts paid; rather, she only testified regarding the date she first filed her claim with GEICO. To the extent this evidence was improperly admitted, its admission was harmless, as Davis does not raise any challenge related to the date of Tilrico's claim.

[7] *Hamilton v. State*, 771 P.2d 1358, 1362 (Alaska App. 1989) (recognizing that "the risks of the abuse of hearsay are sufficiently important" that, at sentencing, "the [S]tate should be required to prove the unavailability of declarant witnesses before using their hearsay declarations against a defendant who denies the allegations under oath and submits to cross-examination").

show plain error.[8] We find no plain error in this case. Davis testified that he did not cause the accident, but he never entered a testimonial denial as to GEICO's assessment, nor did he dispute the amount of money GEICO paid Tilrico to settle her insurance claim.[9] Under these circumstances, it was not plain error for the district court to rely on hearsay statements to establish the value of the damage.[10]

Second, Davis argues that there was insufficient evidence to support the monetary amount awarded to GEICO. As in other cases involving claims of insufficient evidence, this Court does not pass judgment on issues of credibility and instead "construe[s] the record in the light most favorable to the [S]tate and determine[s] whether a reasonable fact-finder could conclude that the disputed amount of restitution was established by a preponderance of the evidence."[11]

Viewing the evidence in this light, we conclude that sufficient evidence supported the $1,573 restitution award to GEICO. Tilrico testified that after Davis rear-

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[8] *See Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

[9] Davis did testify that "[t]here was no significant damage to either of our vehicles." But this statement was in the context of Davis's larger testimony that he was not at fault for the accident. Thus, it would not have been clear to the court that this statement was in fact a testimonial denial regarding the *degree* to which Tilrico's vehicle was damaged, as opposed to an assertion that he did not cause any damage. And even if the statement could be viewed as a testimonial denial that required the State to introduce additional evidence, Tilrico herself testified to the extent of the damage to her car as a result of the accident, and the court found her testimony more credible than Davis's.

[10] *See Evan v. State*, 899 P.2d 926, 930 (Alaska App. 1995) (noting that defendant did not "present any materials or call any witnesses to contradict, explain or otherwise rebut" the victim's statements and that "[i]n the absence of any real indication that the information complained of might have been inaccurate," the sentencing court was entitled to consider it (quoting *Nukapigak v. State*, 576 P.2d 982, 984 (Alaska 1978))).

[11] *Noffsinger v. State*, 850 P.2d 647, 650 (Alaska App. 1993).

ended her car, the back hatch of her vehicle was so damaged that it could not open. To settle her insurance claim, Tilrico testified that GEICO paid her "roughly [$]1,500," which was approximately half of the value of the totaled vehicle.[12] When prompted by the prosecutor, Tilrico agreed that $1,573 was likely the precise amount. There was no evidence to contradict or otherwise place this number in dispute. In fact, as we mentioned, Davis's primary claim at the restitution hearing was that he did not cause the damage to Tilrico's vehicle; he did not contest the monetary amount itself. Moreover, Tilrico testified that the insurance payment was not enough to repair the damage to her vehicle, and that the rear hatch remained inoperable.[13]

For these reasons, the restitution judgment of the district court is AFFIRMED.

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[12] A CARFAX report submitted by defense counsel corroborated the car's approximate valuation.

[13] *Cf. Anchorage Nissan, Inc. v. State*, 941 P.2d 1229, 1234 n.6 (Alaska 1997) (explaining that "totaled vehicles are not necessarily 'unrepairable,'" but rather, "the cost of repair merely exceeds the fair market value of the vehicle").