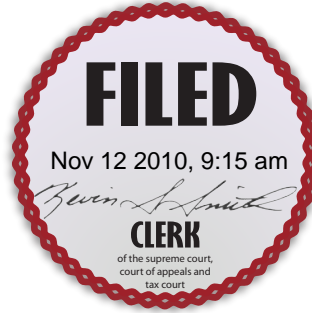


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: W.T.,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-1002-JV-120
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0911-JD-3778

November 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

W.T. admitted committing acts that would be theft and burglary if committed by an adult, and the court ordered him to pay \$436.41 in restitution. He appeals the court's valuation of one of the stolen items. We affirm.

FACTS AND PROCEDURAL HISTORY

At W.T.'s guilty plea and disposition hearing, the victim testified she lost in the theft, among other things, an iPod, two cases for it, and a charger. She testified "[w]ith all the things together" the replacement cost "must be two hundred dollars or so." (Tr. at 10.) The State elicited testimony from her that replacing the iPod would cost \$130, the charger would cost about \$40, and each case about \$15. W.T. offered into evidence a printout of eBay pages showing prices for various iPods.¹ At the end of the hearing the trial court summarized the basis for its restitution calculation:

First of all with respect [sic] iPod [sic] and appropriate accessories [the victim] estimated that it was approximately two hundred dollars for the iPod [sic] as well as the charger and the cases. I think she threw out specifically one hundred thirty dollars. Quit [sic] frankly, I don't think that's much out of line with EBay [sic] estimates. Some of the [sic], they are kind of all of [sic] the map. But most of them are in the same general area. Uh, what I don't know is what the shipping would be as well as I don't know how many songs were on the iPod [sic]. I know it takes money to download. I don't think that's an unreasonable request. Um, twelve dollars and eighty-three cents for the computer cable.

(Tr. at 34.)

¹ The eBay price list was obtained using the search phrase "ipod nano pink." (Respondent's Ex. B.)

DISCUSSION AND DECISION

W.T. challenges only the valuation of the iPod. Indiana Code § 31-37-19-5 provides that a juvenile court may order a child to pay restitution if the victim provides reasonable evidence of her loss. A restitution order must be supported by sufficient evidence of actual loss sustained by the victim of a crime. *Rich v. State*, 890 N.E.2d 44, 49 (Ind. Ct. App. 2008). The amount of loss is a factual matter that can be determined only on presentation of evidence. *Id.* An order of restitution is a matter within the trial court's discretion, and we reverse only on a showing of abuse of that discretion. *R.L.H. v. State*, 738 N.E.2d 312, 319 (Ind. Ct. App. 2000). An abuse of discretion occurs when the order is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* On appeal we do not reweigh the evidence or judge the credibility of witnesses; we instead view the evidence and reasonable inferences most favorably to the judgment. *In re T.S.*, 906 N.E.2d 801, 804 (Ind. 2009).

The only evidence before the court of the value of the cases was the victim's testimony they were worth \$15 each. Taking into account the victim's testimony and the court's statements² about the value of the iPod, the other items, and damage to the victim's

² The court did not mention in its statement the value of the iPod charger. The victim testified it cost at least forty dollars. It is evident the court relied on the victim's testimony to determine the value of the iPod. The State correctly notes the victim's testimony was within the range of the prices listed on the eBay document admitted into evidence, but it also notes, without citation to the record, "there was conflicting evidence presented as to which type of iPod was stolen." (Br. of Appellee at 5.) In fact, neither party directs us to any evidence in the record, "conflicting" or otherwise, indicating which type of iPod was stolen. Because the eBay document reflected prices for a variety of iPod models, it is apparent the trial court did not rely on that document, but instead relied on the victim's testimony.

home, it appears the court ultimately valued the iPod at \$130.00.³

The court's valuation of \$130 reflects the value assigned it by the victim. The court referred in its statement to the cost of shipping and for downloaded music: "what I don't know is what the shipping would be as well as I don't know how many songs were on the iPod [sic]. I know it takes money to download." (Tr. at 34.) But its valuation of the iPod in an amount consistent with the victim's testimony does not indicate the court added to the restitution order an amount for the cost of shipping or music downloads.

A restitution order is not an abuse of discretion if there is evidence to support it. *Jenkins v. State*, 909 N.E.2d 1080, 1084 (Ind. Ct. App. 2009). W.T.'s restitution order as to the iPod was not an abuse of discretion, as the value the court assigned to the iPod reflected the amount to which the victim testified. We accordingly affirm.

Affirmed.

ROBB, J., and VAIDIK, J., concur.

³ W.T.'s assertion the court valued the iPod at \$161 is premised in part on his belief the iPod charger was valued at \$12.83. Testimony indicated the \$12.83 figure was for a power cable to connect a computer to a wall outlet, and was not associated with the iPod. Thus the court must have accepted the victim's testimony that the iPod charger cost \$40.