

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORY JAMES GREENIER,

Defendant-Appellant.

UNPUBLISHED

August 10, 2010

No. 291956

Emmet Circuit Court

LC No. 08-003033-FH

Before: WILDER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

A jury convicted defendant of larceny from a vehicle between \$1,000 and \$20,000, MCL 750.356a(2)(c)(i), malicious destruction of property between \$1,000 and \$20,000, MCL 750.377a(1)(b)(i), and larceny in an amount between \$1,000 and \$20,000, MCL 750.356(3)(a). The trial court sentenced defendant to three concurrent prison terms of two and a half to 15 years. The court also ordered defendant and his codefendants to jointly and severally pay \$8,846.77 in restitution. For the reasons set forth below, we affirm.

Defendant's contends that the trial court erred when it determined the amount of restitution. Specifically, defendant argues that a portion of the restitution amount, \$2,400 for repairing two trailers, was not supported by the evidence. Because defendant did not object to the restitution order at sentencing, this assertion of error is unpreserved, *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003), and we review it for plain error affecting substantial rights, *People v Carines*, 460 Mich 750; 764-765, 597 NW2d 130 (1999).

The statute governing restitution orders in criminal cases states that "the court shall consider the amount of the loss sustained by any victim as a result of the offense." MCL 780.767(1). The statute also provides:

Any dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney. [MCL 780.767(4).]

The court should determine the amount of restitution based on the record evidence. *People v Guajardo*, 213 Mich App 198, 200; 539 NW2d 570 (1995).

The company that sustained damages as a result of defendant's vandalism submitted documents at trial showing that it cost \$2,400 to repair the trailers. An employee of the company testified that "most" of that amount was for labor, calculated at a rate of \$60 per hour for 12 to 15 hours of work. Defendant asserts that a calculation based on the employee's testimony amounts to, at most, a cost of \$1,800. However, defendant's assertion ignores that the employee testified that "most," not all, of the cost was for labor. This estimated labor cost is entirely consistent with the estimated total. Thus, there was no error in the trial court's restitution award.

Defendant also claims that his trial counsel was ineffective for failing to object to the amount awarded. We will not fault trial counsel for failing to raise and advocate a meritless position. *People v Mack*, 265 Mich App 122, 130; 695 NW2d 342 (2005).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Henry William Saad