

REL 10/02/2009

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2008-2009

CR-07-0615

Jerome Theodorou

v.

State of Alabama

Appeal from Lawrence Circuit Court
(CC-05-344)

WINDOM, Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

Kellum and Main, JJ., concur. Wise, P.J., and Welch, J., dissent, with opinion.

CR-07-0615

WISE, PRESIDING JUDGE, dissenting.

I believe the trial court erred in its calculation of the amount of restitution due from Theodorou. For example, the court awarded \$6,616.58 in lost revenue for the days when the business could not operate without the equipment. Also, it appears that the court awarded \$4,572.50 for some type of payments the business had previously made on the equipment. The caselaw regarding the amount of restitution a victim may recover as a result of a defendant's criminal acts is ambiguous, and the application of that law is particularly difficult in cases involving receiving stolen property. Therefore, I urge the Alabama Supreme Court to clarify the caselaw governing restitution. Nevertheless, I do not believe that all of the losses Bussman Construction Company suffered were attributable to Theodorou's criminal act of receiving the stolen property. Accordingly, I respectfully dissent.

WELCH, Judge, dissenting.

I respectfully dissent, and I join Presiding Judge Wise's dissent. I write specially to point out that Jerome Theodorou was ordered to pay restitution calculated from the date that

CR-07-0615

the victim's property was stolen in September 2004. However, Theodorou was not charged with theft of property; he was charged with and found guilty of receiving stolen property. The evidence reflected that Theodorou did not take possession of the victims property until January 20, 2005. Therefore, I believe that the monetary damages incurred by the victim between the date of the theft in September 2004 and Theodorou's receipt of the stolen property on January 20, 2005, were improperly attributed to Theodorou and should not have been assessed against Theodorou as restitution.