

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON MOORE, <sup>1</sup>	§	
	§	No. 409, 2012
Defendant Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Case No. 1107023359
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: January 10, 2013  
Decided: February 15, 2013

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

**ORDER**

This 15<sup>th</sup> day of February 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Jason Moore, the defendant-below (“Moore”), appeals from two orders: an April 23, 2012 Family Court order for restitution, and a July 16, 2012 order denying Moore’s motion to reconsider the restitution order. On appeal, Moore claims that the Family Court erred by ordering him to pay \$2,442.56 in restitution to the victim whose car he stole and damaged. We reverse the April 23, 2012

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<sup>1</sup> This Court *sua sponte* assigned a pseudonym to the appellant by Order dated July 24, 2012 under Supreme Court Rule 7(d).

Family Court order, deny as moot Moore's appeal from the July 16, 2012 order, and remand the case to the Family Court to perform a new damages calculation.

2. In July 2011, Moore, a juvenile, stole and damaged the car of Franklin Dowe ("Dowe"). The Family Court referred Moore's case to the Victim Restoration and Community Mediation Program ("VRCMP") to determine the amount of restitution that Moore would have to pay to Dowe for damaging Dowe's car. Based on a car repair shop estimate of the cost of repairing the car, the VRCMP recommended that Moore pay \$2,442.56 in restitution to Dowe.

3. In November 2011, Moore's mother moved *pro se* on Moore's behalf for a restitution hearing to challenge the VRCMP's damages recommendation. At the April 23, 2012 restitution hearing, the Family Court accepted the VRCMP's recommendation, and ordered Moore to pay \$2,442.56 to Dowe. In May 2012, Moore, through counsel, moved to reconsider the Family Court restitution order. The Family Court denied his motion on July 16, 2012. This appeal followed.

4. The issue presented is whether the Family Court abused its discretion by ordering Moore to pay \$2,442.56 in restitution based on the VRCMP's recommendation. We review a trial judge's determination of the amount of restitution for abuse of discretion.<sup>2</sup> On appeal, Moore claims that, under *State v.*

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<sup>2</sup> *Gann v. State*, 31 A.3d 75, 2011 WL 4985701, at \*3 (Del. Oct. 19, 2011) (TABLE).

*R.T.*,<sup>3</sup> the Family Court’s determination of the amount of restitution should have been based on the loss in fair market value of the damage sustained to Dowe’s car rather than the replacement cost of repairing the damage.<sup>4</sup>

5. In *State v. R.T.*,<sup>5</sup> the Family Court noted that several Delaware statutes<sup>6</sup> permit either fair market value or replacement cost as the basis for calculating an appropriate restitution amount. The Family Court noted, however, that its own criminal rules<sup>7</sup> “seem[] to mandate the exclusive use” of fair market value.<sup>8</sup> The court held that:

[P]lacing statutory guidance over Court Rule, it is the opinion of the Court that in determining [restitution], the Court will prefer the use of fair market value over replacement costs, but will also consider

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<sup>3</sup> 2005 WL 1420878, at \*5-6 (Del. Fam. Feb. 28, 2005).

<sup>4</sup> Moore also argues that the State did not establish by a preponderance of the evidence that he damaged Dowe’s car. At the restitution hearing, however, Moore conceded that he had implicitly acknowledged in his plea agreement that he had damaged Dowe’s car. Moore stated that he was not challenging whether he owed Dowe any restitution, but only the amount of restitution due. Moore’s contrary argument on appeal—that he did not damage Dowe’s car at all—is facially meritless and procedurally foreclosed.

Moore furthermore claims that the Family Court erred at his restitution hearing by admitting hearsay statements from a police officer to Dowe regarding the damage to Dowe’s car. The police officer did not testify at the restitution hearing, although Dowe did. In ordering restitution at the conclusion of the hearing, however, the Family Court expressly “discarded” the police officer’s alleged statements to Dowe. Moore’s claim that the police officer’s hearsay statements should not have been admitted at the restitution hearing is, therefore, moot.

<sup>5</sup> 2005 WL 1420878.

<sup>6</sup> 10 *Del. C.* § 1009(c)(5); 11 *Del. C.* §§ 224, 4106(a).

<sup>7</sup> FAM. CT. R. CRIM. P. 32(g).

<sup>8</sup> *State v. R.T.*, *supra* note 5, at \*6.

replacement costs where the use of fair market value is not feasible, so long as the use of replacement costs does not unjustly enrich the victim at the expense of the defendant.<sup>9</sup>

6. In this case, the VRCMP recommended the amount of restitution based on a car repair shop invoice that estimated the cost of replacing the damaged parts of Dowe's car. The Family Court did not employ the preferred fair market value method of valuation, or explain why it adopted the VRCMP's replacement cost instead of the fair market value. Nor did the court independently assess whether the VRCMP's replacement cost recommendation was fair and reasonable. We conclude, for these reasons, that the Family Court's determination of the restitution amount failed to follow Family Court precedent and thereby constituted an abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the April 23, 2012 order for restitution is **REVERSED**, and the case is **REMANDED** to the Family Court to conduct a new damages calculation consistent with this Order. Moore's appeal from the July 16, 2012 Family Court order denying his motion for reconsideration is **DENIED as moot**. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>9</sup> *Id.*