

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JOSHUA HAYNES,

Appellant,

v.

Case No. 5D21-1010
LT Case No. 2020-CF-000031

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed December 3, 2021

Appeal from the Circuit Court
for Marion County,
Gary L. Sanders, Judge.

Matthew J. Metz, Public Defender, and
Ryan M. Belanger, Assistant Public
Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Daniel P. Caldwell,
Assistant Attorney General, Daytona
Beach, for Appellee.

HARRIS, J.

Joshua Haynes appeals the trial court's restitution order. Haynes argues that there is no competent, substantial evidence to support the restitution award, and that the amount of restitution awarded by the court resulted in an improper windfall to the victim. We agree with Haynes, reverse the restitution award, and remand for a new restitution hearing.

In January 2020, the Marion County Sheriff's Office found Haynes in possession of a stolen work truck belonging to Castle Rock Site Work ("Castle Rock"). Prior to its theft, the vehicle contained a two-box GPS system used by Castle Rock bulldozers to assist in cutting dirt to a precise elevation. Haynes eventually pled guilty to charges of aggravated fleeing and eluding and grand theft (as well as several probation violations in unrelated cases). The trial court sentenced Haynes to ten years in prison and ordered him to pay restitution to Castle Rock.

At the restitution hearing, the State sought reimbursement to Castle Rock for the GPS unit. Michael Oehlerking, owner and president of Castle Rock, testified that when the stolen truck was returned to him, the GPS unit was missing. Oehlerking further testified that the system cost him "about \$41,000" and that he owed approximately \$25,000 from his financing of the GPS unit at the time it was stolen.

Oehlerking stated that his business was forced to replace the unit immediately after the theft because the unit was required for day-to-day jobs. He produced a sales estimate showing the price of a new unit to be \$41,043.38. The court accepted the sales estimate into evidence over defense counsel's objection. Oehlerking stated that he did not have time to obtain the actual receipt for the GPS unit. There was no testimony regarding the fair market value of the stolen GPS unit, only the replacement value for a new GPS unit. At the conclusion of the restitution hearing, the court ordered Haynes to pay Castle Rock \$68,043.38, representing the \$41,043.38 amount set forth in the sales estimate and an additional \$25,000, the amount Oehlerking approximated that he still owed on the GPS unit.¹ This was error.

This Court reviews the trial court's restitution order for abuse of discretion. Ashton v. State, 790 So. 2d 1115, 1117 (Fla. 5th DCA 2001). The burden of proving the amount of restitution is on the State, and the amount must be proven by a preponderance of the evidence. See § 775.089(7), Fla. Stat. (2020); Santana v. State, 795 So. 2d 1112 (Fla. 5th DCA 2001).

Oehlerking's testimony that the cost to replace the stolen GPS was "roughly \$41,000," was not sufficient to support an award of restitution. J.L.C.

¹ The total restitution amount also included \$2,000 to repair physical damage to the vehicle. Haynes has not challenged this portion of the restitution award.

v. State, 189 So. 3d 260, 262 (Fla. 2d DCA 2016) (“[A] mere ‘guesstimate’ of value . . . does not constitute competent, substantial evidence that will support a restitution order.”); Bennett v. State, 944 So. 2d 524, 526 (Fla. 4th DCA 2006) (“Guesstimates and speculative testimony are inappropriate evidence on which to base an award of restitution.”).

Further, it was error for the trial court to admit into evidence over Haynes’s objection the sales quote presented by the State. Repair estimates—like sales quotes—have been found to be hearsay. Williams v. State, 850 So. 2d 627, 627 (Fla. 2d DCA 2003) (“The trial court’s restitution award was based on these two estimates, which were purely hearsay.”). For the sales quote to be admitted into evidence, the owner or employee who provided the sales quote must testify. T.J.N. v. State, 977 So. 2d 770, 773 (Fla. 2d DCA 2008) (“When testimony concerning the estimated cost of repairs to damaged property is offered in evidence to prove the truth of the matter asserted, it is hearsay unless made by the declarant while testifying at the trial or hearing.” (internal quotations omitted)).

In A.J.A. v. State, 215 So. 3d 639 (Fla. 5th DCA 2017), this Court held that it was error for the trial court to rely upon a repair estimate as the only evidence upon which to base that portion of the restitution order. Here, the only testimony Oehlerking could provide was that the replacement GPS unit

cost “roughly \$41,000.” The court then awarded \$41,043.38—the exact amount provided for in the inadmissible sales quote document. This was error.

We also agree with Haynes that the trial court’s restitution order resulted in a windfall to the victim. While intended to make the victim whole, “restitution is not intended to provide a victim with a windfall.” Rodriguez v. State, 956 So. 2d 1226, 1232 (Fla. 4th DCA 2007) (citing Glaubius v. State, 688 So. 2d 913, 916 (Fla. 1997)). While it may seem unfair that Oehlerking owes money on a GPS unit that he no longer possesses, the balance is a product of Oehlerking’s financial decision. The proper restitution amount that can be attributed to Haynes’s conduct is reflected by the GPS unit’s fair market value, which was not presented at the hearing. See Tolbert v. State, 268 So. 3d 947, 949 (Fla. 1st DCA 2019) (holding victim received windfall where court awarded restitution for amount owed on damaged vehicle as opposed to fair market value). Prior to his truck being stolen, Oehlerking owed \$25,000 and had a used GPS unit. As it stands, Oehlerking now has his \$25,000 loan paid off and a new GPS unit, thus resulting in an improper windfall.

We therefore reverse the restitution order and remand for the court to conduct a new restitution hearing at which the State must establish, by

competent, substantial, and admissible evidence, the fair market value of the stolen GPS unit as the time of the offense.

REVERSED and REMANDED, with instructions.

EDWARDS and WOZNIAK, JJ., concur.