

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

JULY TERM 2004

JAY JACKSON WALTERS,

Appellant,

v.

CASE NO. 5D04-521

STATE OF FLORIDA,

Appellee.

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Opinion filed December 3, 2004

Appeal from the Circuit Court for
Orange County,
Lisa T. Munyon, Judge.

James B. Gibson, Public Defender, and
Dee Ball, Assistant Public Defender,
Daytona Beach, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, Kellie Nielan and Elizabeth
C. King, Assistant Attorneys General,
Daytona Beach, for Appellee.

PER CURIAM.

Jay Jackson Walters appeals an order awarding restitution for the full replacement cost of a stereo system that he removed from an automobile that he burglarized.

The State argued that the new replacement stereo system was comparable to the two-year-old system removed from the automobile, but the record suggests

otherwise.¹ This court has repeatedly held that absent special circumstances fair market value, not replacement value, is the correct measure of damages when determining restitution. See, e.g., *Ibrahim v. State*, 866 So. 2d 749 (Fla. 5th DCA 2004) (holding that defendant could not be ordered to pay restitution for stolen safe where there was no testimony as to the fair market value of the safe at the time it was stolen); *J.F.H. v. State*, 849 So. 2d 1151 (Fla. 5th DCA 2003) (holding that fair market value, not replacement value, is the correct measure of restitution damages); *Santana v. State*, 795 So. 2d 1112 (Fla. 5th DCA 2001) (noting that the fair market value of property is deemed sufficient to compensate the victim of an offense for his loss.)

The order of restitution is vacated and the matter remanded to the trial court for a new restitution hearing to determine the value of the stereo system at the time it was stolen.

ORDER VACATED and REMANDED.

SAWAYA, C.J., PETERSON and MONACO, JJ., concur.

¹ The police report provides, "Aaron wrote a sworn statement stating that he will testify and prosecute. The speakers-amp box valued at \$300.00, Sony XL-plod CD unit at \$150.00 . . . was found in the back seat of [Walters'] vehicle." Although not specifically stated, one may logically assume that the victim provided the officer with the values reported. If true, then the cost of the replacement stereo is approximately double the cost of the original equipment.