

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2717

SPENCER SEVILLE GALLION,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Steven B. Whittington, Judge.

December 28, 2020

PER CURIAM.

Spencer Gallion appeals from convictions for grand theft of electronic goods, grand theft of a firearm, and possession of a firearm by a convicted felon. We agree with his argument that the State failed to prove the value of the electronic goods stolen and reverse and remand as to that count. We otherwise affirm without comment.

The State alleged that Appellant stole two televisions and a stereo from the victim in this case. At Appellant's trial, the victim provided a receipt for one of the televisions showing that it had been purchased for \$532.86 the year before Appellant stole it. No evidence was offered as to the value of the other television. The victim provided another receipt showing that she had purchased

the stereo stolen by Appellant for \$699.99. Beyond the two receipts, there was no testimony regarding the condition of the items at the time they were stolen, or how much they may have depreciated in value since they were purchased.

The value of the property stolen is an essential element of grand theft that must be proved by the State. *Carter v. State*, 238 So. 3d 362, 364 (Fla. 1st DCA 2017). To prove third-degree grand theft the State was required to prove that the value of the items was greater than \$300. § 812.014(2)(c)1., Fla. Stat. (2017). “Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.” § 812.012(10)(a)1., Fla. Stat. (2017). “The value of tangible personal property may be proved with evidence of the original purchase price, together with the percentage or amount of depreciation since the property’s purchase, its manner of use, and its condition and quality.” *Carter*, 238 So. 3d at 364 (quoting *Fritts v. State*, 58 So. 3d 430, 431 (Fla. 1st DCA 2011)). The State does not provide sufficient evidence where it “elicit[s] no testimony regarding the condition and quality of any of the items taken or their depreciation.” *Id.*

In *Carter*, the victim estimated that the value of the goods stolen was \$4,000, including a laptop purchased a few months prior for \$640, and a tablet, less than a year old, estimated to cost between \$250 and \$300 new. *Id.* This Court found this value evidence to be insufficient to establish the value because “the only evidence of the value of the stolen items was testimony providing ballpark estimates at best,” and “[t]he State elicited no testimony regarding the condition and quality of any of the items taken or their depreciation.” *Id.* Likewise, in this case, the State offered no evidence regarding the condition and quality of the stolen electronics at the time of the theft. We must therefore reverse because the State’s efforts fell short under *Carter* of proving the value of the goods stolen.

On remand, we direct the court to enter an amended judgment for petit theft as to the electronic goods and resentence Appellant accordingly on this count. *See Chambers v. State*, 200 So. 3d 242, 246 (Fla. 1st DCA 2016) (“Because the State failed to establish the

value of the stolen property, the greatest offense for which Chambers could be properly convicted was petit theft.”).

AFFIRMED in part, REVERSED in part, and REMANDED.

MAKAR, OSTERHAUS, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Kathryn Lane, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Julian E. Markham, Assistant Attorney General, Tallahassee, for Appellee.