

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

MICHAEL PEREZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D15-2768

[October 5, 2016]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; James McCann, Judge; L.T. Case No. 562013CF003514 A.

Carey Haughwout, Public Defender, and Benjamin Eisenberg, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Georgina Jimenez-Orosa, Assistant Attorney General, West Palm Beach, for appellee.

CONNER, J.

Appellant Michael Perez was charged with one count of burglary of a dwelling and one count of grand theft in the third degree. A jury found him guilty as to the former, but acquitted him as to the latter. He was sentenced to eight years in prison and ordered to pay restitution for items that went missing from the house.

On appeal, he argues the trial court erred in ordering him to pay restitution for missing pieces of jewelry when the jury acquitted him of the charged crime of grand theft. The State confesses error and concedes this point. We agree that this constituted fundamental error. *See, e.g., Cooley v. State*, 686 So. 2d 732, 732 (Fla. 2d DCA 1997) (“A court cannot order the defendant to pay restitution for damages arising out of a crime for which he was acquitted.”). We therefore vacate the trial court’s order imposing restitution on Appellant.

Appellant also raises other issues on his conviction and sentence related to the burglary charge. We find no merit in any of these arguments

and affirm without comment.

Affirmed in part; reversed in part.

LEVINE and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.