

Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed March 13, 2013.

No. 3D12-1025
Lower Tribunal No. 10-5793

Jeffrey Zeisset,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Stacy D. Glick,
Judge.

Carlos J. Martinez, Public Defender, Eleventh Judicial Circuit, and Robert
Kalter, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Nicholas A. Merlin, Assistant
Attorney General, for appellee.

Before SUAREZ and LOGUE, JJ., and SCHWARTZ, Senior Judge.

On Confession of Error

SCHWARTZ, Senior Judge.

The defendant appeals from an order determining the amount of restitution required for unreturned items of personal property—a TV, a play station, and the like—which he took from a locker unit he had burglarized. The state commendably confesses that the trial court erred in determining the amount of restitution on the basis only of the cost of the items' replacement. To the contrary, the applicable standard is the fair market value of the property, as to which the State introduced no evidence below. See J.D.H. v. State, 931 So. 2d 241, 242 (Fla. 5th DCA 2006); Aboyou v. State, 842 So. 2d 238, 240 (Fla. 2d DCA 2003); State v. Hawthorne, 573 So. 2d 330 (Fla. 1991). Accordingly, as both sides agree, the order under review is vacated for a new hearing at which the State will be required to establish the fair market value of the items taken from the victims.

Vacated and remanded.