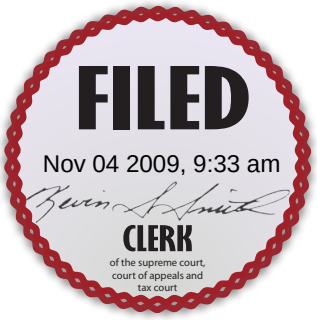

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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL C. TRIMBLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 55A01-0903-CR-114
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane S. Craney, Judge
Cause No. 55D03-0712-FD-341

November 4, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael C. Trimble ("Trimble") pleaded guilty in Morgan Superior Court to Class B misdemeanor criminal mischief. Trimble was sentenced to 180 days, with all but two days suspended to probation. Following a restitution hearing, the trial court ordered Trimble to pay $17,286.72 in restitution to the victim. Trimble appeals and argues that the trial court abused its discretion when it ordered him to pay more restitution than the actual loss suffered by the victim for the Class B misdemeanor Trimble admitted committing.

We affirm in part, reverse in part, and remand.

Facts and Procedural History

On or around October 5, 2006, Trimble and James and Sue Blunk (collectively "Blunks") allegedly entered into a Lease agreement with an option to purchase for a house and property located in Martinsville, Indiana. Subsequently, Trimble allegedly failed to pay rent as agreed, and the Blunks ejected Trimble, his girlfriend, and his children from the property. When Mr. Blunk entered the property, he claimed that Trimble had caused substantial damage to the house, to the grounds, and to Mr. Blunk's van, which was stored on the property.

On December 7, 2007, the State charged Trimble with Class D felony theft and Class B misdemeanor criminal mischief. On July 23, 2008, on the eve of trial, Trimble agreed to plead guilty to Class B misdemeanor criminal mischief and the State agreed to dismiss the Class D felony theft charge. Restitution was to be determined at a later hearing, however, Trimble's attorney did pay $500 towards restitution on that day.

On September 29, 2008, the trial court held a restitution hearing. Mr. Blunk testified that he paid $10,924.72 to repair the damage done to the house and grounds. Tr. p. 20. Additionally, the Blunks had paid Trimble $5,962 to repair the roof of the house but Trimble never made the repairs. Tr. pp. 7-8. Finally, Mr. Blunk testified that his van, valued at $1,000, was also destroyed and sold for scrap for $100. Tr. p. 11. The trial court ordered that Trimble pay restitution in the amount of $17,286.72.

Trimble now appeals.

Discussion and Decision

A restitution order must be supported by sufficient evidence of actual loss sustained by the victim or victims of a crime. See Lohmiller v. State, 884 N.E.2d 903, 916 (Ind. Ct. App. 2008). "The purpose of a restitution order is to impress upon the criminal defendant the magnitude of the loss he has caused and to defray costs to the victims caused by the offense." Henderson v. State, 848 N.E.2d 341, 346 (Ind. Ct. App. 2006). "The amount of actual loss is a factual matter that can be determined only upon the presentation of evidence." Bennett v. State, 862 N.E.2d 1281, 1287 (Ind. Ct. App. 2007). We review a trial court's order of restitution for an abuse of discretion. See Bailey v. State, 717 N.E.2d 1, 4 (Ind. 1999). Our supreme court has determined that restitution may be paid to those shown to have suffered injury, harm, or loss as a direct and immediate result of the criminal acts of a defendant. See e.g. Reinbold v. State, 555 N.E.2d 463 (Ind. 1990) (order of restitution against defendant was proper for murder victim's funeral and burial expenses and for child support for the victim's surviving

children). We will affirm the trial court's order if sufficient evidence exists to support its decision. Creager v. State, 737 N.E.2d 771, 779 (Ind. Ct. App. 2000), trans. denied.

On the day of trial, following the disclosure of the land contract between Trimble and the Blunks, the parties agreed that Trimble would not be incarcerated further but would enter an otherwise open plea to Class B misdemeanor criminal mischief, with a restitution hearing to be held on a later date. In exchange for this plea, Trimble's attorney paid Blunks $500 on behalf of Trimble and the State agreed to dismiss the class D felony theft charge also pending against Trimble and which was also based on his residency on the Blunk real estate.

In response to the trial court's request that Trimble's attorney establish the factual basis for the plea, Trimble's attorney examined Trimble and the following colloquy took place:

> [Counsel]. Michael, let me remind you you're under oath. Michael, between the time period of October 1, 2006, and December 25, 2007, were you living at a property in Martinsville, County of Morgan, State of Indiana?
>
> [Trimble]. Yes, sir.
>
> Q. And . . . you were trying to buy this on a rent to own basis pursuant to a land contract with Jim and Sue Blunk. Is that correct?
>
> A. That's correct.
>
> Q. And when you were living there, there was property, personal property, on . . . on that property, in particular a van that belonged to Jim and Sue Blunk. Correct?
>
> A. Yes, sir.
>
> Q. And that . . . that van became . . . was damaged recklessly, correct?

A. (inaudible).

Q. You learned somehow that your children had shot BBs or . . . or something and . . . and done things to it, correct?

A. (inaudible).

Q. Now, according to the police report the tires looked like they were slashed with a knife. Do you think your children slashed the tires with a knife?

A. I don't believe that . . . that they slashed the tires (inaudible).

Q. But you . . .

The Court: I couldn't hear you.

A. I don't . . . no, I don't think my children would have done that, slashed the tires. I know they shot the windows out, but I don't think that they would know you could use a knife to cut a tire.

Q. Right. But you . . . you understand that the van was in your care because it was on . . . it was in the garage on the property that you had possession of.

A. Yes, sir.

Q. And therefore you're responsible for it. And by not supervising your children, therefore, because they're minors they can't be held legally responsible, but you, as their legal guardian can. Do understand that?

A. (inaudible).

Q. And do . . . do you admit that because you failed to prevent damage to the van and learned your children did that, therefore, you . . . you admit that you recklessly damaged property of Jim and Sue Blunk on this time period, that being between October 1st and November 25, 2000 . . . November 1st . . . let me try that again. Between October 1, 2006 and November 25, 2007.

A. That's correct.

* * *

The Court: In the interest of justice, I will accept the plea.

Guilty Plea Transcript pp. 30-32.

This testimony served as the sole factual basis for Trimble's plea of guilty to Class B misdemeanor criminal mischief under Indiana Code section 35-43-1-2(a). However, this factual basis does not mention any damage allegedly done to the residence nor did Trimble admit to damaging the residence.

Following a restitution hearing in which only Jim Blunk testified, and after credit for the $100 Blunk received for selling the van as scrap, the trial court ordered Trimble to pay restitution in the amount of $17,286.72 to the Blunks for the value of the van destroyed by Trimble *and* for repairs to the residence allegedly necessitated by damage caused by Trimble, and for Blunk's payments to Trimble for roof repairs allegedly never completed.

Indiana Code section 35-50-5-3(a) (2004) states, in relevant part, that:

> [I]n addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:
>
> > (1) property damages of the victim incurred *as a result of the crime*, based on the actual cost of repair (or replacement if repair is inappropriate)[.]

(Emphasis added)

This statutory language allows for restitution to be imposed for property damages that occurred *as a result of the crime*. However, in the case before us, the trial court ordered restitution not only for the damage to the van but also for damages allegedly

done to the residence and for the amounts paid to Trimble for work he allegedly never completed.

The trial court was well within its discretion when it ordered restitution for the damaged van because the damage to the van was a direct and immediate result of the crime to which Trimble pleaded guilty. But the trial court abused its discretion when it ordered Trimble to pay restitution for damage allegedly done to the residence and for the amount paid to Trimble for work he allegedly never completed. These amounts were not a direct or immediate result of Trimble's only admitted criminal act, Class B misdemeanor criminal mischief regarding Blunks' van.[1] See Huddleston v. State, 764 N.E.2d 655, 657 (Ind. Ct. App. 2002); Vanness v. State, 605 N.E.2d 777, 783 (Ind. Ct. App. 1992), trans. denied

For all of these reasons, the trial court's restitution order is modified to be in the net amount of $400, after credit for the salvage value of the van at issue and $500 previously received by Blunks on Trimble's behalf.

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[1] Trimble also argues that restitution should be capped at $250 because if the loss had been more than $250 the crime would have been classified as a more serious offense, either a Class A misdemeanor or a Class D felony. See Indiana Code § 35-43-1-2(a) (Class B misdemeanor); Indiana Code § 35-43-1-2(a)(2)(A)(i) (when the loss is between $250 and $2,500, the crime is a Class A misdemeanor); and Indiana Code § 35-43-1-2(a)(2)(B)(i) (when the loss is at least $2,500).

A similar argument was raised in In re J.L.T, 712 N.E.2d 7 (Ind. Ct. App. 1999), where a juvenile argued that he could not be ordered to pay restitution in the amount of $9,333 because his adjudication was based on Class D felony criminal mischief so the maximum amount of the restitution could not exceed $2,500. However, we disagreed and concluded that "[t]he pecuniary loss a victim suffers as the result of criminal mischief determines the level of the offense for which the offending party may be charged. However, the level of the offense has no bearing on the amount of restitution the court may impose." Id. at 12

The restitution statute at issue does not contain any caps on the amount of restitution. In the absence of any statutory restitution caps or any case law stating the presence of restitution based on the level of the convicted crime caps, we will not impose them.

Affirmed in part, reversed in part, and remanded for entry of an amended restitution order consistent with this opinion.

DARDEN, J., and ROBB, J., concur.