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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0665**

State of Minnesota,
Respondent,

vs.

Joseph Jerome Milek,
Appellant.

**Filed December 30, 2013
Affirmed
Stoneburner, Judge**

Polk County District Court
File No. 60-CR-12-1022

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gregory A. Widseth, Polk County Attorney, Andrew W. Johnson, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the amount of restitution imposed by the district court as part of his sentence for unauthorized use of a motor vehicle, arguing that the district court

abused its discretion by ordering an amount that, he asserts, does “more than restore the victim to her original financial condition.” Because the amount awarded does not overcompensate the victim and is not punitive, we conclude that the award does not constitute an abuse of discretion and affirm.

FACTS

Appellant Joseph Jerome Milek stole a 2002 Pontiac Grand Prix owned by M.F. from mechanic D.H.’s property where the car was parked awaiting repair of electrical wires in the engine. Milek caused damage to the front of the car that will cost \$1,777.13 to repair. Milek was convicted of unauthorized use of a motor vehicle, in violation of Minn. Stat. § 609.52, subd. 2(17) and subd. 3(3)(d)(v) (2010) (unauthorized use of a motor vehicle the value of which is not more than \$1,000).

Before Milek’s sentencing hearing, respondent State of Minnesota presented M.F.’s certificate of restitution requesting restitution in the amount of \$1,897.13, which is the sum of the cost to repair the damage caused by Milek and \$120 that M.F. incurred to transport the car after the theft to a body shop. Milek requested a restitution hearing.

At the restitution hearing, M.F. testified that, prior to the theft, the vehicle had a six-inch crack in the back bumper, caused by running over a dead deer that was lying in the road, and damage to engine wires caused in an unrelated fire. Based on the year and mileage of the car, M.F.’s insurer wrote the car off as a total loss and paid her insurance claim accordingly. M.F. did not believe that the car was a total loss, and she repurchased the car from her insurer for \$320.

D.H. testified that he inspected the car after the electrical fire and told M.F. that there was no major damage to the wires and that he could fix it when he had time. D.H. testified that he did not have an opinion about the value of the car but that it was “certainly” worth more than \$320 before the theft. Both D.H. and M.F. testified that there was no damage to the front of the car before the theft.

After the car was recovered from Milek’s theft, M.F. obtained an estimate from a collision center that it would cost \$1,777.13 to repair the damage caused by Milek. Milek did not dispute the cost of repair or restitution for the \$120 towing fee, but argued to the district court that it could not award any more than \$320 for the car, which, Milek asserts, is the total value of the car at the time of the theft.

The district court found that the damage Milek caused to the car constitutes an economic loss to M.F. and that Milek did not present any evidence challenging the amount required to repair the damage he caused. The district court then applied its own formula to calculate M.F.’s economic loss resulting from the damage caused by Milek. Referencing Minn. Stat. § 604.14, subd. 1 (2012) (entitling the owner of stolen property to punitive damages up to the value of the property), and Minn. Stat. § 548.05 (2012) (permitting treble damages for trespass to personal property), the district court averaged the sum of \$320 (representing the amount M.F. paid her insurer for the car, which the district court characterized as the value of the car), twice that amount (\$640), three times that amount (\$960), and the repair estimate (\$1,777.13), to arrive at \$924.28 as “the reasonable economic loss relating to the motor vehicle.” The district court added the

undisputed towing fee and awarded restitution in the amount of \$1,044.28. This appeal followed.

D E C I S I O N

On appeal, Milek asserts that, as a matter of law, restitution for economic loss related to the car is limited to the amount M.F. paid her insurer for the car and that anything over that amount is a windfall to M.F. and punitive to him.¹ Milek also challenges the district court's use of civil statutes to determine the amount of restitution. Milek argues that because Minn. Stat. § 609.52, subd. 1(3) (2010) defines "value," in relevant part, as the retail market value at the time of the theft, M.F.'s economic loss for purpose of restitution cannot exceed that amount. And he asserts that, in this case, the retail market value of M.F.'s car is \$320. Milek also argues that, as a matter of law, restitution is limited to actual out-of-pocket expenditures. We disagree with all of Milek's assertions.

A district court has broad discretion in awarding restitution, and we apply an abuse of discretion standard in reviewing restitution awards. *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007); *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). "The primary purpose of [restitution] is to restore crime victims to the same financial position they were in before the crime." *Palubicki*, 727 N.W.2d at 666. In determining whether to order restitution and the amount, the district court must consider "(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income,

¹ Milek confirmed at oral argument on appeal that he does not challenge the \$120 towing fee award.

resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2010).

A request for restitution is not limited to out-of-pocket losses resulting from the crime.

Minn. Stat. § 611A.04, subd. 1(a) (2010). But restitution is not meant to be punitive.

State v. Pflepsen, 590 N.W.2d 759, 769 (Minn. 1999).

Generally, a person who is entitled to a judgment for harm to personal property not amounting to total destruction in value has an election under the law of damages to choose the cost of repair or the difference in value before and after the accident.

O’Connor v. Schwartz, 304 Minn. 155, 158, 229 N.W.2d 511, 513 (1975) (noting adoption of Restatement (First) of Torts, § 928 (1939), as measure of damages). In a

civil case, the election is made by the evidence introduced by the claimant. 4A

Minnesota Practice, CIVJIG 92.10 use note (2006). Although Milek challenges the

district court’s use of civil law to determine economic loss for damage to personal

property, his challenge is not supported by any authority. We conclude that a district

court may, in its discretion, consider civil liability for damage to personal property in its

determination of economic loss for such damage in a restitution hearing.²

“Economic loss” is not defined in the restitution statute, and Milek asserts no

authority to support his argument that retail market value is the only measure of

economic loss for damage to stolen property in the context of a restitution award. The

fact that retail market value of a stolen item is used by the legislature to determine the

² We do not, however, condone consideration of civil statutes that impose punitive or statutory damages in the context of restitution because such damages are not, by definition, economic loss.

severity of a criminal penalty for theft does not limit restitution for damage to personal property to retail market value. Because M.F. elected cost-of-repair damages, the state did not introduce evidence of the value of the car before the theft, but the record plainly does not support a finding that the retail market value of M.F.'s car is the amount she paid her insurer after the insurer wrote the car off as totaled. M.F. and D.H. each testified that the value of the car exceeded that amount prior to the theft, and their testimony was not disputed. Because M.F. elected to pursue repair costs rather than the difference in the value of the car before and after Milek damaged the car, the state did not have any burden to produce evidence of the retail market value of the car before the theft.

While there is merit to Milek's challenge to the district court's method of determining the appropriate amount of economic loss sustained by M.F., particularly the use of civil statutes that include punitive damages, we will affirm a district court's correct decision even if we do not agree with its reasoning. *Bains v. Piper, Jaffray & Hopwood, Inc.*, 497 N.W.2d 263, 270 (Minn. App. 1993), *review denied* (Minn. Apr. 20, 1993). Because the restitution amount is less than the economic loss M.F. incurred and less than the value stated for the level of offense charged, we conclude that the district court did not err or abuse its discretion by awarding restitution in the amount of \$1,044.28, an amount that is not punitive to Milek and is not a windfall to M.F.

Affirmed.