

DA 20-0590

IN THE SUPREME COURT OF THE STATE OF MONTANA

2022 MT 127N

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CITY OF HELENA,

Plaintiff and Appellee,

v.

LESLIE GENE CASEM,

Defendant and Appellant.

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APPEAL FROM: District Court of the First Judicial District,  
In and For the County of Lewis and Clark, Cause No. BDC 2020-443  
Honorable Michael F. McMahon, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Haley Connell Jackson, Assistant  
Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Bree Gee, Assistant Attorney  
General, Helena, Montana

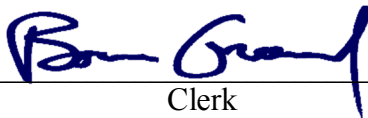
Rebecca Dockter, Helena City Attorney, Helena, Montana

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Submitted on Briefs: June 1, 2022

Decided: June 28, 2022

Filed:

  
Clerk

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Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Leslie Gene Casem (Casem) appeals the Order of the First Judicial District Court, Lewis and Clark County, affirming the City of Helena Municipal Court's Restitution Order. We affirm.

¶3 Casem was charged in the City of Helena Municipal Court with Partner/Family Member Assault—2nd offense (PFMA) against his ex-girlfriend, in violation of § 45-5-206(1)(a), MCA. During the PFMA incident, Casem threw away the victim's laptop. Pursuant to a plea agreement, Casem agreed to pay restitution for the destroyed laptop. The parties disagreed on the value of the laptop. Casem maintained he was only liable for the cost to replace the used laptop, while his victim argued Casem was responsible for the purchase of a new laptop.

¶4 The Municipal Court set a restitution hearing. At the hearing, the victim testified that the destroyed laptop was not new but was in "perfect" condition, and that her search for a comparable model led her to a new, unused laptop marketed for \$649.99. She indicated that she did not look for used laptops due to a negative past experience with used

electronics. The City offered into evidence a printout reflecting the new laptop's specifications and value.

¶5 Casem's investigator called local pawn shops, searched eBay for comparable computers, and offered into evidence a printout of the eBay search results. Several of the eBay search results were either too vague to determine comparability, did not match the specifications the victim testified to, or were listed "for parts only." The two results comparable to the specifications cost approximately \$100 more than the \$649.99 that the victim requested. The investigator testified that the victim's proposed replacement was newer than the destroyed laptop and that, based on her research, a comparable used replacement laptop would total about \$435.<sup>1</sup>

¶6 The Municipal Court found that the victim was not required to purchase a used replacement as no guarantee existed that the replacement would be functional. The Municipal Court found that the victim's estimate represented a reasonable price for a comparable new laptop and awarded restitution of \$649.99. Casem appealed the Municipal Court's Restitution Order to the District Court. The District Court found no error and affirmed the Restitution Order. Casem appeals.

¶7 The issue raised on appeal is whether the Municipal Court erred in awarding \$649.99 in restitution to the victim.

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<sup>1</sup> The investigator testified that the average price of the similar models returned in her eBay search was \$410.82, and that she then added \$25 to cover shipping expenses.

¶8 A district court functions as an intermediate appellate court when a case is appealed from a lower court. Sections 3-5-303 and 3-6-110, MCA. We independently review an appeal from the district court’s decision. *State v. McClelland*, 2015 MT 281, ¶ 7, 381 Mont. 164, 357 P.3d 906. Criminal restitution orders are reviewed for compliance with §§ 46-18-241 through -249, MCA. *State v. Pierre*, 2020 MT 160, ¶ 10, 400 Mont. 283, 466 P.3d 494. Related conclusions and applications of law are reviewed de novo for correctness. *Pierre*, ¶ 10 (citation omitted). We review for clear error findings of fact regarding the amount of restitution. *State v. Dodson*, 2011 MT 302, ¶ 8, 363 Mont. 63, 265 P.3d 1254 (citation omitted). We find clear error where the findings are not supported by substantial evidence. *Dodson*, ¶ 8. Evidence is substantial if “a reasonable mind might accept it as adequate to support a conclusion.” *Dodson*, ¶ 8 (quoting *State v. O’Connell*, 2011 MT 242, ¶ 7, 362 Mont. 171, 261 P.3d 1042).

¶9 Section 46-18-201(5), MCA, provides that, where a person pleads guilty and the sentencing judge finds that the victim has sustained a pecuniary loss, the sentencing judge shall require payment of full restitution to the victim. As pertinent here, a pecuniary loss includes “the full replacement cost of property taken, destroyed, harmed, or otherwise devalued as a result of the offender’s criminal conduct[.]” Section 46-18-243(1)(b), MCA. When a presentence report is not requested, the court shall accept evidence of the victim’s loss at the time of sentencing. Section 46-18-242(2), MCA. Courts may use reasonable methods based on the best evidence available to calculate uncertain pecuniary losses. *Dodson*, ¶ 12 (citing *O’Connell*, ¶ 14). These methods include a reasonably close estimate

of the loss. *State v. Benoit*, 2002 MT 166, ¶ 29, 310 Mont. 449, 51 P.3d 495. District courts may rely upon a victim’s estimate of loss to determine the level of restitution. *State v. Hill*, 2016 MT 219, ¶ 11, 384 Mont. 486, 380 P.3d 768 (citations omitted). The restitution amount must be supported by a preponderance of the evidence. *McClelland*, ¶ 10 (citation omitted).

¶10 The Municipal Court calculated Casem’s restitution obligation using reasonable methods based upon the best evidence available. The victim testified to the specifications of her destroyed laptop and presented evidence of a comparable replacement. Conversely, Casem’s expert provided eBay search results that were either incomparable to the specifications provided or too vague to determine comparability. The few results directly comparable to the victim’s testimony were approximately \$100 more than her estimate. The Municipal Court relied on the victim’s testimony and the State’s evidence which supported that testimony—and which presented a reasonably close estimate of the loss—over Casem’s more speculative, unreliable information. The Municipal Court’s calculation was supported by a preponderance of the evidence. *See McClelland*, ¶ 10.

¶11 The Restitution Order awarding the victim \$649.99 is affirmed.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ DIRK M. SANDEFUR

/S/ JIM RICE