

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050771-CA
v.	)	
	)	F I L E D
Darrell Lawrence Wessendorf,	)	(May 11, 2006)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 197</span>

-----

Eighth District, Duchesne Department, 041800170  
The Honorable John R. Anderson

Attorneys: Cindy Barton-Coombs, Roosevelt, for Appellant  
Mark L. Shurtleff and Matthew D. Bates, Salt Lake  
City, for Appellee

-----

Before Judges Bench, Billings, and Thorne.

PER CURIAM:

Darrell Lawrence Wessendorf appeals the trial court's order of restitution. He asserts the amount of restitution was improperly determined. Although Wessendorf has filed his opening brief, this is before the court on the State's motion for summary reversal because the State concedes there was error.

At the hearing to determine restitution, the victim testified that she did not have the vehicle repaired, but instead sold it for about the same amount for which she had bought it. Even though she did not, and would not, incur economic damage based on the repair estimate, the trial court awarded restitution based on the repair estimate. The State concedes that this was an inappropriate measure of restitution.

Restitution is the payment of pecuniary damages resulting from a defendant's criminal conduct. See Utah Code Ann. § 77-38a-102(11) (Supp. 2005). Pecuniary damage is demonstrable economic injury. See id. § 77-38a-102(6). "The appropriate measure of the loss or damage to a victim is fact-sensitive and will vary based on the facts of a particular case." State v. Corbitt, 2003 UT App 417, ¶15, 82 P.3d 211. Although the estimated cost of repair of the vehicle damage was about \$1200,

the victim did not suffer economic injury in that amount because she did not have the repairs performed. There was no testimony about any out-of-pocket expense that the victim incurred due to Wessendorf's conduct. However, there was testimony that the vehicle market value may have been reduced by Wessendorf's conduct, which would be a more appropriate measure of economic loss if proven.

Accordingly, we vacate the trial court's restitution order and remand for a new restitution hearing. We need not reach the other issues raised by Wessendorf because we remand for a new hearing.

---

Russell W. Bench,  
Presiding Judge

---

Judith M. Billings, Judge

---

William A. Thorne Jr., Judge