

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	NO. 66317-8-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
RONALD R. ROMAN,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 14, 2011
)	

Lau, J. — Ronald Roman was convicted of residential burglary in juvenile court and granted a deferred disposition. He appeals the restitution order only. Roman claims the court erred in ordering restitution for the full value of a Samsung television damaged during the burglary without proof it was a total loss. We conclude the court did not abuse its discretion and affirm the restitution order.

FACTS

On May 28, 2010, Jeff Brown found a flat screen television in his backyard. He called his next-door neighbor, Keith Hunter, to ask if the television belonged to him. Hunter confirmed it was his television. Hunter then discovered a broken window in his

home and determined the home had been burglarized.

Hunter called the police. While waiting for the police to respond, he and Carlos Meza, another neighbor, noticed a gray car driving slowly by with its occupants looking around nervously. A short time later, Hunter found the car parked and saw two men standing between his and Brown's houses. Meza ran into Hunter's backyard and saw another individual—later identified as Ronald Roman—jump over the fence carrying a flat screen television. Roman and the two other men fled in the gray car. Hunter was able to get the license plate number, and Meza unsuccessfully attempted to follow the suspects. Richard Thompson, another neighbor, also saw the fleeing men and attempted to pursue them.

Using the license plate number, police tracked down the gray car and detained the suspects. Based on identifications by Hunter and his neighbors, the suspects, including Roman, were arrested.

Roman was charged in juvenile court with residential burglary. He stipulated to the facts in the police report and certification for determination of probable cause. The court found him guilty as charged and ordered a deferred disposition,¹ with restitution to be determined at a later date.

Hunter filed a "Victim Loss Claim" listing property that had been damaged or

¹ The Juvenile Justice Act of 1977 grants juvenile courts discretion to defer disposition of an offender's conviction under certain circumstances. RCW 13.40.127. Qualifying juvenile offenders may earn vacation and dismissal of a case with prejudice upon "full compliance with conditions of supervision and payment of full restitution." RCW 13.40.127(9).

unrecovered during the burglary.² Hunter's insurance carrier, Allstate, provided an estimate for the items Hunter claimed. Allstate valued Hunter's damaged Samsung television at \$635.23 after depreciation,³ the unrecovered Toshiba television at \$795.29 after depreciation, and the broken window at \$241.47. Thus, the total damage to Hunter and Allstate was \$1,672.99, of which Hunter paid \$250 as a deductible and Allstate paid \$1,422.99.

At the restitution hearing, the State sought \$1,422.99 for Allstate and \$250 for Hunter for a total of \$1,672.99. The defense had no objection to the \$250 deductible or the \$795.29 for the unrecovered Toshiba television, but objected to paying \$635.23 for replacement of the damaged Samsung television without proof it was a total loss. The court granted the State's restitution request in full.

ANALYSIS

Roman contends the juvenile court erred when it ordered restitution for the full value of the damaged Samsung television without proof it was a total loss. The State counters that the court properly exercised its discretion because the restitution order was based on documentation in the loss claim and insurance estimate, not mere speculation.

² Under "unrecovered property," Hunter listed a 42-inch Toshiba LCD television, a handgun, a Nikon camera, gym bags, shoes, and luggage. Under "damaged property," Hunter listed the broken window and a 50-inch Samsung plasma television. Hunter was unable to provide receipts for the camera, gym bags, shoes, or luggage, and the State did not request restitution for those items.

³ The record reflects that the Samsung television (recovered from Brown's yard) sustained "water damage."

The authority to impose restitution in a juvenile case is controlled by statute.

State v. Hiett, 154 Wn.2d 560, 563, 115 P.3d 274 (2005). In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent.

.....

(f) If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution.

RCW 13.40.190(1)(a), (f). The sentencing court “has discretion to determine the amount, terms and conditions of the restitution.” State v. Bennett, 63 Wn. App. 530, 532, 821 P.2d 499 (1991). Restitution orders are reviewed for abuse of discretion. Bennett, 63 Wn. App. at 533. An abuse of discretion occurs when a restitution order is manifestly unreasonable or the court exercises its discretion on untenable grounds or for untenable reasons. State v. Smith, 33 Wn. App. 791, 798-99, 658 P.2d 1250 (1983). “Where reasonable persons could take differing views regarding the propriety of the trial court’s actions, the trial court has not abused its discretion.” State v. Demery, 144 Wn.2d 753, 758, 30 P.3d 1278 (2001).

Restitution awards “must be based on a causal relationship between the offense charged and proved and the victim’s losses or damages.” State v. Keigan C., 120 Wn. App. 604, 607, 86 P.3d 798 (2004). Restitution is appropriate for damages that were a foreseeable consequence of a defendant’s criminal acts. State v. Tettters, 81 Wn. App. 478, 914 P.2d 784 (1996). The State is not required to prove loss beyond a reasonable doubt or by clear and convincing evidence. Bennett, 63 Wn. App. at 535. The victim need only present evidence that “affords a reasonable basis for establishing

the loss and does not subject the trier of fact to mere speculation or conjecture.”

Bennett, 63 Wn. App. at 535 (quoting State v. Horner, 53 Wn. App. 806, 808, 770 P.2d 1056 (1989)). Once the State establishes the fact of damage, “the amount need not be shown with mathematical certainty.” State v. Mark, 36 Wn. App. 428, 434, 675 P.2d 1250 (1984). If the defendant disputes facts relevant to a restitution award, the State must prove damages by a preponderance of the evidence. State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

Our review of the record shows the juvenile court did not abuse its discretion in awarding restitution for the Samsung television. The court considered Hunter’s loss claim, Allstate’s estimate and subsequent payment of Hunter’s claim, the parties’ briefs, and testimony at the sentencing hearing. Roman did not contest guilt, and he stipulated to the facts in the police reports and certificate for determination of probable cause. The certificate for determination of probable cause indicates the Samsung television was found in Brown’s backyard and sustained water damage. Allstate considered Hunter’s claim and covered the television’s replacement value (adjusted for depreciation) for a total of \$635.23.⁴ At the sentencing hearing, the court noted, “I’m satisfied that these amounts are appropriate, so I will sign the order. . . . I don’t see any indication that it’s speculative.” Report of Proceedings (RP) (Nov. 2, 2010) at 21. The court’s decision rests on evidence appearing in the record. The State established the fact of damage. The insurance estimate and Allstate’s subsequent payment of the

⁴ To clarify, this amount was not the cost of a new television (\$1,199.99); it was the value of Hunter’s television after one year and nine months’ depreciation.

claim afford a reasonable basis for estimating loss. Because water damage may destroy a television and require replacement, we cannot say that the restitution award here is manifestly unreasonable.

Roman cites State v. Dedonado, 99 Wn. App. 251, 991 P.2d 1216 (2000), in arguing that a restitution award is “improper where supporting documents failed to demonstrate amount spent for replacement of damaged property was appropriate.” Appellant’s Br. at 6. But in Dedonado, the defendant challenged the causal connection between his actions and the damages. In finding that the State failed to provide sufficient documentation showing that a replacement generator of a certain brand was a proper replacement for another brand and also failed to show that numerous repairs made to a van were causally related to the defendant’s action in damaging the van’s ignition switch, the court held:

A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted. . . . The State did not meet its burden of proving the restitution amounts here by a preponderance of the evidence because the documentation it provided did not establish a causal connection between Dedonado’s actions and the damages.”

Dedonado, 99 Wn. App. at 257. Here, Roman does not challenge the causal connection between the damaged Samsung television and the burglary. Rather, he contests the sufficiency of the evidence concerning the amount of damages, an issue not addressed in Dedonado.

Roman’s case is more like Bennett, where the victim gave the trial court a list of stolen items along with insurance company worksheets to prove the amount of

damages. The Bennett court found this evidence sufficient and even noted, “We perceive no reason to question the reliability of the insurance company’s accounting of [the victim’s] loss, given an insurer’s strong financial interest in not overpaying claims.” Bennett, 63 Wn. App. at 535 n.4. Here, the State provided Hunter’s loss claim, including a list of stolen and damaged items as well as Allstate’s estimate and payment, confirmation regarding Hunter’s claim. This evidence provided a reasonable basis to establish loss. Roman fails to show that the sentencing court abused its discretion by relying on the loss claim and the insurance evidence in awarding restitution for the Samsung television.

CONCLUSION

Because the court did not abuse its discretion in awarding restitution for the Samsung television, we affirm the restitution order.

WE CONCUR:

Spencer, J.

Jan, J.

Leach, a.c.j.