

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46546-2018
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR-2017-4062
)
 PAUL CHRISTOPHER BEST,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

HONORABLE RICHARD S. CHRISTENSEN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Paul Christopher Best appeals from the restitution order imposed upon his conviction for burglary.

Statement Of Facts And Course Of Proceedings

According to the Presentence Report (“PSI”), the facts underlying Best’s conviction for burglary are as follows:

On 09/16/2016, Deputy Dooley responded to the report of a residential burglary. The owner of the residence, Chad Hammond, reported that all of his firearms had been stolen. Mr. Hammond indicated he believed Paul Best stole the firearms. On 11/12/2016, Deputy Dooley received a call from Edward Osinski who indicated he purchased several firearms from Paul Best and he was concerned they were stolen after hearing Mr. Best was suspected of stealing several firearms. Deputy Dooley confirmed the firearms where [sic] the same firearms stolen from Chad Hammond.

On 11/14/2016, Mr. Best was questioned by Detective Meehan and admitted he stole the firearms, ammo, a trail camera, and a piggy bank with change.

(PSI, p.3.)

The state charged Best with burglary and grand theft of a firearm. (R., pp.50-51.) Pursuant to a plea agreement, Best entered a guilty plea to burglary, and the grand theft charge was dismissed upon the state’s motion. (R., pp.57-61.) The district court sentenced Best to a unified sentence of five years with two years fixed, and retained jurisdiction for up to one year. (R., pp.88-89.) The state submitted a Memorandum of Restitution, requesting \$3,990 be paid to the victims, including \$1,300 for a stolen AR15 (R., pp.90-94), and Best filed an objection (R., pp.95-96). After a restitution hearing, the district court entered an Order of Restitution, ordering Best to pay \$2,860 in restitution, which included

\$1,300 for the AR15 rifle. (R., pp.108-113; see generally 9/26/18 Transcript (hereinafter “Tr.”).) Best filed a timely Notice of Appeal from that order. (R., pp.114-116.)

ISSUE

Best states the issue on appeal as:

Did the district court err in awarding restitution for the AR15 where the amount ordered was not based on substantial and competent evidence?

(Appellant's Brief, p.3.)

The state rephrases the issue on appeal as:

Has Best failed to show that the district court's order of restitution was not supported by substantial and competent evidence?

ARGUMENT

Best Has Failed To Show That The District Court's Order Of Restitution Was Not Supported By Substantial And Competent Evidence

A. Introduction

Best argues the district court erred when it awarded restitution in the amount of \$1,300 for the AR15 rifle he stole from the Hammonds when he burglarized a shop on their property in 2018. (Appellant's Brief, pp.4-9.) Best claims "the State did not provide any evidence regarding the market value of the AR15 at the time and place of the burglary; nor did it . . . submit admissible testimony or evidence which would identify the replacement cost of the rifle." (Appellant's Brief, p.7.) Best's argument is unavailing. Because the restitution award was supported by substantial evidence, and is authorized by the restitution statute, Best has failed to show the district court abused its discretion in the amount of restitution awarded.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). In reviewing a discretionary decision, this Court considers whether the district court (1) correctly perceived the issue as one of discretion; (2) "acted within the outer boundaries of its discretion and consistently with any legal standards applicable to specific choices it had"; and (3) exercised reason in reaching its decision. State v. Cottrell, 152 Idaho 387, 391, 271 P.3d 1243, 1247 (Ct. App. 2012) (citing State v. Powell, 125 Idaho 889, 891, 876 P.2d 587, 589 (1994)).

The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

C. The Restitution Award Was Supported By Substantial And Competent Evidence

Best contends the state did not present substantial evidence of either the "market value" of the AR15 at the time of the burglary, or the cost of replacing the rifle. (Appellant's Brief, p.7.) The record shows otherwise.

Idaho Code § 19-5304(2) authorizes a sentencing court to order a defendant to pay restitution for economic loss to the victim of a crime. The decision whether to order restitution, and in what amount, is within the discretion of a trial court, guided by consideration of the factors set forth in I.C. § 19-5304(7) and by the policy favoring full compensation to crime victims who suffer economic loss. State v. Richmond, 137 Idaho 35, 37, 43 P.3d 794, 796 (Ct. App. 2002); State v. Bybee, 115 Idaho 541, 543, 768 P.2d 804, 806 (Ct. App. 1989). The trial court is directed by statute to base the amount of economic loss to be awarded upon the preponderance of evidence submitted to the trial court by the prosecutor, defendant, victim, or presentence investigator. I.C. § 19-5304(6). The appellate court will not overturn an order of restitution unless an abuse of discretion is shown. Richmond, 137 Idaho at 37, 43 P.3d at 796.

"'Economic loss' includes, but is not limited to, the value of property taken . . . and direct out-of-pocket losses or expenses" I.C. § 19-5304(1)(a). "Value" means "the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime." I.C. §§ 19-5304(1)(c), 18-2402(11)(a). Generally, the "market value" of

consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the “cost of replacement,” which would be the cost for the owner to reacquire the same goods. State v. Smith, 144 Idaho 687, 693, 169 P.3d 275, 281 (Ct. App. 2007).

During the restitution hearing, Chad Hammond testified that he was the owner of the AR15 rifle stolen during Best’s 2016 burglary, and he paid \$1,300 for it new in 2009 or 2008. (Tr., p.8, L.9 – p.10, L.3; p.13, Ls.6-22.) Mr. Hammond explained that the AR15 had not been used very much and was in “near-perfect condition” at the time of the burglary. (Tr., p.9, Ls.6-22.) Mr. Hammond requested restitution in the amount of \$1,300, the amount he paid for it new in 2008 or 2009. (Tr., p.9, L.24 – p.10, L.3; p.13, Ls.6-19.)

Mr. Hammond was not sure, but he thought the AR15 was a “Smith and Wesson.” (Tr., p.12, L.19 – p.13, L.1.) The AR15 was “basically a stock [model] with a laser sight” added to it. (Tr., p.14, Ls.7-12.) When asked if he had checked to see how much the market value of the AR15 was “now,” Mr. Hammond answered, “No.” (Tr., p.13, L.23 – p.14, L.2; see id., p.16, L.15 – p.17, L.2.) Mr. Hammond testified that, after the theft occurred, he called the business he purchased the AR15 from (“Triple B”) to get a sales receipt, but was informed that they did not have any record of the sale; he did not ask the business representative what the market value of the rifle was. (Tr., p.14, Ls.13-22.)

Stacy Ann Hammond, Chad Hammond’s wife, testified that she, with her husband’s input, researched what a similar model to the AR15 she and her husband owned costs “brand new.” (Tr., p.21, Ls.9-23.) Ms. Hammond accessed a “Sportsman outdoor store” website and found that a brand new Smith and Wesson AR15 rifle, similar to what she and

her husband owned, sold for \$1,479. (Tr., p.21, L.19 – p.22, L.3.)¹ Ms. Hammond stated that the \$1,479 amount for a new and similar Smith and Wesson was the price “[t]o replace” the stolen AR15. (Tr., p.23, L.23 – p.24, L.1.)

After the testimonial phase of the restitution hearing, Best’s attorney argued:

Your Honor, they’re not entitled to \$1300 that they paid nearly ten years ago for that. They’re entitled to market value. The police report indicates that my client sold that AR15 for \$600. [See p.47, Conf. Doc., Appellate Vol 1, pdf.] If you look at page 13 of 23, a guy named Anderson bought it for \$600.

That was back then. It's in the -- the first full paragraph, seven lines down, almost in the middle of the paragraph -- of the sentence. So they're not entitled to \$1300. That's the closest to a market value at that particular time. Market value now, if you look on the front of my page that I gave you, I called Cabela's yesterday, brand new, an AR15, Smith and Wesson goes 6 to \$700, a used one. Because the market is slow now, goes for about 300.

(Tr., p.27, L.18 – p.28, L.7.)

The district court initially concluded:

With all due respect to counsel, that she calls up and gets some statement from Cabela's on the phone, I don't know that that can be considered as legitimate evidence, even though I don't discredit the officer of the court or [defense counsel’s] integrity when she makes that representation.

But certainly the Court is knowledgeable that firearms can cost a significant amount. And in this particular case, the police report indicates that it was pawned or sold by the perpetrator of a crime for \$600. Well, that certainly would indicate a fairly good indication of a discounted value.

I'm most impressed, though, with Ms. Hammond's -- what appears to be her due diligence in terms of trying to talk with her husband and her

¹ When asked, “how do you know it was the same exact model?” Ms. Hammond said she did not. (Tr., p.22, L.14 – p.23, L.5.) She explained, “[i]t was the one closest to the picture what [sic] we had before[,]” and she “looked at multiple pictures and . . . asked [her] husband which one match[ed] the gun [they] had[,]” and “[t]his was the one we figured looked most like ours” – a Smith and Wesson. (Tr., p.22, L.16 – p.23, L.16 (explanations added).)

son and to look at photographs to get an idea of what the precise weapon was, and then to make some research into what the valuation of their stolen weapon was. And the testimony that she came up with was 1470-something dollars, which certainly exceeds the \$1300 that was requested here.

I haven't received any testimony of any great reliability that the defense has offered to counter that, and so I'm prepared to accept that that is valid testimony as to the value that the defendant would be obligated under a restitution order.

(Tr., p.35, L.1 – p.36, L.1.)

After discussing the restitution owed for the other stolen items, the court asked the parties if there were any questions, to which defense counsel answered:

Your Honor, yes. I'm going to object to the amount of restitution for the AR15. Her testimony, she testified three times that it was a new value, that \$1300 was a new value. And that is outside of your discretion to order that.

So if the Court is not going to reconsider and at least – I mean, again, based on the record of testimony, they have only given us new prices. They're supposed to be market value.

(Tr., p.37, Ls.7-15.)

The district court responded:

THE COURT: Well, I understand that the law requires it to be market value. The Court has to come to a conclusion as to what market value is. And as I indicated in my findings, the cost, the new cost can be something to take into account. As I've also noted, property can increase in value. Simply because you purchased something for \$1300 today doesn't mean that it automatically is worth less tomorrow.

Now, if I buy a certain item, it may clearly depreciate right away. If I buy some items, it may enhance in value. It just depends on what it is. I know that there's plenty of folks in this community that have firearms –

[Defense counsel]: I –

THE COURT: -- that have enhanced in value significant [sic]. I haven't heard any evidence to the contrary other than the police report says that he hocked it for \$600, and I think it's pretty easy for the Court to

conclude that when somebody steals something, they sell it for a lot less than what the fair market would be, so your objection is certainly noted.

(Tr., p.37, L.16 – p.38, L.11 (explanation added).)

Best argues on appeal that because there was no specific testimony establishing what the market or replacement value of the AR15 was on the date of the offense in 2016, the \$1,300 restitution award was not supported by substantial evidence. (See generally Appellant’s Brief, pp.4-8); see also I.C. §§ 18-2402(11)(a) and 19-5304(1)(c) (“[V]alue means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the crime.”). However, the district court was well within its discretion to hold that \$1300 (the original purchase price) was a reasonable fair market value of the stolen AR15 that was, as Chad Hammond testified, in near-perfect condition nine years after its purchase. (See Tr., p.9, Ls.6-19.)

The district court set the parameters of its market value determination of the AR15 by: (1) stating that the cost of a new firearm can be considered, (2) questioning the evidentiary value of defense counsel’s statements about what someone from Cabella’s told her during a telephone conversation in regard to the values of new AR15s (\$600 - \$700) and used AR15s (\$300), (3) noting that, after the burglary, Best sold the stolen (i.e., “hot”) AR15 for a discounted value of \$600, (4) explaining that “[s]imply because you purchased something for \$1300 today doesn’t mean that it automatically is worth less tomorrow” (Tr., p.37, Ls.20-23), and (5) crediting Ms. Hammond’s research and finding that the cost of a new and similar AR15 was “1470-something dollars, which certainly exceeds the \$1300 that was requested here” and there was no “testimony of any great reliability that the defense has offered to counter that” (Tr., p.35, L.18 – p.36, L.1).

The district court reasonably concluded under the preponderance standard that, based on the above factors, and in an effort to make the victims whole, the fair market value of the AR15 was the original purchase price of \$1,300. See Richmond, 137 Idaho at 37, 43 P.3d at 796; Bybee, 115 Idaho at 543, 768 P.2d at 806. The district court's restitution determination was greatly influenced by Stacy Hammond's testimony that a new and similar model cost \$1,479 at the time of the restitution hearing, and Chad Hammond's testimony that the AR15 was in near-perfect condition when stolen. Moreover, Stacy Hammond testified that it would cost \$1,479 to *replace* the stolen AR15 with a new rifle that was similar. (Tr., p.23, L.12 – p.24, L.1.) The implication is that a practical way to replace a nine-year-old AR15 that was in near-perfect condition is with a new similar model.² Whether determined by market value at the time of the burglary, or replacement cost, the district court's restitution award for the AR15 is supported by substantial and competent evidence. Best has failed to show error in the restitution award.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order on restitution.

DATED this 22nd day of August, 2019.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

² Although the state did not present an expert opinion of what a near-perfect nine year-old AR15 would have been worth in 2016, it was not required to do so.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of August, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ John C. McKinney
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