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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45949
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2016-35232
)
 MOHAMAD BAKIR ALI HABEB,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE RICHARD D. GREENWOOD
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Mohamad Bakir Ali Habeb appeals from the district court's order on restitution.

Statement Of The Facts And Course Of The Proceedings

The state charged Habeb with aggravated assault, felony malicious injury to property, and reckless driving. (R., pp. 33-34.) The malicious injury to property count was based on Habeb hitting a 2011 Hyundai Elantra with a baseball bat. (R., pp. 34, 158 (“Defendant finds himself facing a restitution hearing because he took a baseball bat to the car as part of some plan to get revenge for his then-girlfriend”).) A jury found him guilty of the included offense of misdemeanor assault, and felony malicious injury to property and reckless driving as charged. (R., pp. 121-23.) The district court withheld judgment and placed Habeb on probation. (R., pp. 126-31.) The district court ordered Habeb to pay restitution in the amount of \$5,860.45 for the repair costs of the Hyundai. (R., pp. 155-61.)

ISSUE

Habeb states the issue on appeal as:

Whether the restitution order was not supported by sufficient evidence to show the actual economic loss in this case.

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Habeb failed to show that the district court's factual findings are clearly erroneous?

ARGUMENT

Habeb Has Failed To Show That The District Court's Restitution Findings Are Clearly Erroneous

A. Introduction

The district court ordered Habeb to pay restitution in the amount of \$5,860.45 for the repair costs of the Hyundai. (R., pp. 155-61.) Habeb claims the district court erred. (Appellant's brief, pp. 5-12.) Specifically, he claims that the state had a duty to prove the replacement cost of the Hyundai exceeded the repair cost, but failed to do so. (Appellant's brief, p. 10.) Habeb's argument fails on the facts and the law.

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). 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. Habeb Has Failed To Show That The Evidence Does Not Support The District Court's Restitution Order

Idaho Code § 19-5304(2) authorizes a court to "order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." For purposes of Idaho's restitution statute, a "victim" includes any "person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct." I.C. § 19-5304(1)(e)(i) (emphasis added). "Economic loss" includes, among other things, "the value of property taken, destroyed, broken, or otherwise harmed." I.C. § 19-5304(1)(a)

(emphasis added). “[T]he trial court must base the amount of restitution upon the preponderance of evidence submitted by the prosecutor, defendant, victim, or presentence investigator.” State v. Stewart, 161 Idaho 235, 236, 384 P.3d 999, 1000 (Ct. App. 2016).

The state presented a repair estimate of \$5,860.45 for body damage (State’s Restitution Exhibit 2), a repair estimate of \$200 for electrical damage (State’s Restitution Exhibit 3), and a Blue Book report showing the car was valued at \$6,535 to \$8,032 (State’s Restitution Exhibit 1). The district court found the body damage repair supported by the evidence, but the claim of damage to the electrical system not to be supported. (R., pp. 156-57.) As to the value, the district court found that because the value of the car had not been established beyond the Blue Book value, the evidence supported granting the repair costs and ordered \$5,860.45 for body damage. (R., pp. 157-58.)

The district court’s findings are supported by the evidence and are not clearly erroneous. The district court found that the body repair estimate was sufficient evidence of the costs of repair, and rejected claims that not all the body damage had been inflicted by Habeb. (R., pp. 155-56.) The district court recognized that “[i]f the cost of repair exceeds the value of the car, the victim is entitled to the value, not the cost of repair.” (R., p. 157.) In determining whether the cost of the vehicle was less than the cost of repair, the district court considered the Blue Book valuation and the evidence that the car had a salvage title. (R., p. 157.) The district court recognized that a car with a salvage title would have less value than an equivalent car with a clear title. (R., p. 157.) However, there was no evidence of “how much the value is decreased.” (R., p. 157.) Thus, although Habeb elicited evidence that the car had a salvage title, from which it could be inferred that the car had less value than it would with a clear title, Habeb did not present “any evidence as

to the actual effect of that fact on the value of a car, let alone *this* car.” (R., pp. 157-58.) “The only evidence in the record is that the value of the car, even taken at the lowest estimate, is higher than the cost of repair.” (R., p. 158.) The evidence in this case is sufficient to support the district court’s award of the costs of repairing the body damage Habeb inflicted with his baseball bat.

On appeal Habeb argues that the district court should have applied some sort of burden shifting metric, cobbled together from legal sources other than those applicable to restitution hearings, by which he rebutted some presumption that the value of the car was greater than the repair cost. (Appellant’s brief, pp. 6-12.) The state’s response to this is that the standard seems overly complicated and was not raised below.¹ The state acknowledges, as set forth above, that it bears the burden of proof by a preponderance of the evidence. The state further acknowledges that the district court correctly determined that where the value of the property is less than the repair costs, the proper measure of restitution is the market value of the property. The district court properly concluded that, based on the evidence before it, the proper measure of restitution was the cost of repairing the body damage caused by Habeb.

Even if Habeb’s proposed legal standard were applied, however, he has failed to show error. According to Habeb, a defendant at a restitution hearing ““may challenge the cost of repair measure ... by presenting evidence of a lesser fair market value.”” (Appellant’s brief, p. 6 (ellipses added) (quoting State v. Hughes, 130 Idaho 698, 703, 946

¹ As set forth above, the state submits that the proper standard is that “the trial court must base the amount of restitution upon the preponderance of evidence submitted by the prosecutor, defendant, victim, or presentence investigator.” State v. Stewart, 161 Idaho 235, 236, 384 P.3d 999, 1000 (Ct. App. 2016). There is no need to engraft Habeb’s proposed presumptions and shifting burdens of proof.

P.2d 1338, 1343 (Ct. App. 1997).) This then triggers a duty by the state to prove “that the cost of repair was less than the actual market value of the car.” (Appellant’s brief, p. 10.) This argument fails because Habeb presented no evidence that the car’s fair market value was less than the repair costs.

Habeb did present evidence that the car had a salvage title. (Tr., p. 13, L. 7 – p. 15, L. 16.) The district court acknowledged that such would reduce the value of the car. (R., p. 157.) As found by the district court, this is not evidence that the value of the car was less than the \$5,860.45 repair cost. (R., pp. 157-58 (Habeb “[did] not come forth with any evidence as to the actual effect of that fact [of a salvage title] on the value of a car, let alone *this car*” (emphasis original)).) The Blue Book estimate of the car’s value was \$6,535 to \$8,032. (State’s Restitution Exhibit 1.) The salvage title may put the actual car’s value at the low end of this range, or even below it, but it is mere speculation that it put the fair market at less than \$5,860.45. Thus, Habeb did not present evidence sufficient to rebut any presumption that the fair market value of the car exceeded the repair costs.

Even if his evidence were sufficient to rebut the presumption he advocates, he has failed to show error in the district court’s weighing of the evidence. “The only evidence in the record is that the value of the car, even taken at the lowest estimate, is higher than the cost of repair.” (R., p. 158.) The evidence supports the district court’s determination, and Habeb has failed to show clear error.

The district court’s restitution award is supported by substantial and competent evidence. Habeb 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 4th day of January, 2019.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of January, 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/ Kenneth K. Jorgensen
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KKJ/dd