

IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR LEVY COUNTY, FLORIDA
APPELLATE DIVISION

LORETTA ANN BEZET,
Appellant,

v.

Case No.: 38-2020-AP-0001
LT No.: 38-2018-MM-0505-A

STATE OF FLORIDA,
Appellee.

ORDER ON APPEAL

HON. ROBERT K. GROEB, Circuit Judge
HON. DENISE R. FERRERO, Circuit Judge

*HON. SUSANNE WILSON BULLARD, Circuit Judge, did not participate in the deliberation or decision.

An Appeal from the Levy County Court, Judge James T. Browning
For Appellant: Jack R. Maro, Esq.
For Appellee: Glenn E. Bryan, Esq., Assistant State Attorney

PER CURIAM.

Appellant seeks review of an order of restitution which awarded restitution for sixteen of twenty-three categories of damages presented by the victim, Ms. Lisa Cornell, at a restitution hearing following his conviction for contracting without a license. We find merit in Appellant's argument that some of the restitution awarded was not supported by the record.

Restitution should be tied to fair market value at the time of the loss unless there is a showing by the State that there are circumstances that fair market value does not adequately compensate the victim. *Mansingh v. State*, 588 So. 2d 636, 638 (Fla. 1st DCA 1991). "Fair market value may be established either through direct testimony or through production of evidence relating to *all* of the following four criteria: (1) the original cost, (2) the manner in

which the items were used, (3) their general condition and quality, and (4) the percentage of depreciation.” *Id.*

In category (5.), the trial court awarded \$2,223.00 for a carved teak window that went missing while Appellant was working in the victim’s house. Ms. Cornell provided clear testimony as to the original cost of the item (\$1,500.00), the manner in which it had been used (decorative), and the general condition and quality (pristine condition; no damage). She did not provide a percentage of depreciation, instead indicating that it would cost \$2,233.00 to have a new window carved and shipped from Indonesia. A court is not required to use fair market value as the only means of determining a restitution award if there are circumstances in which it would not adequately reflect the victim’s loss, such as if an item is an heirloom or subject to rapid depreciation. *See Fernandez v. State*, 98 So.3d 730, 732 (Fla. 2d DCA 2012). However, there is nothing in the record that explains the trial court’s rationale for departing from the fair market value of the missing item and awarding the replacement cost as restitution. Without further explanation, this award constitutes an abuse of discretion.

In categories (7.), (8.), (9.), and (10.), the trial court awarded restitution for various statues that either went missing or were broken while Appellant was working in the victim’s house. Ms. Cornell testified that each of the items were in excellent condition with no real wear and tear. For the item in category (7.), she stated that she originally paid \$2,500.00 and it would cost \$15,000.00 to replace because it was a genuine antique. The trial court awarded \$5,000.00. For the item in category (8.), Ms. Cornell testified that the original cost was \$481.50, and it would cost \$2,485.00 to purchase and ship a nearly identical replacement. The trial court awarded \$2,400.00. For a pair of items in category (9.), Ms. Cornell stated that she originally paid \$972.00 and the cost of purchasing and shipping replacements would be \$2,998.00. The

trial court awarded \$1,944.00. Finally, Ms. Cornell originally paid \$535.00 for the item in category (10.), which would cost \$1,350.00 to purchase and ship a replacement. The trial court awarded \$1,340.00 in restitution for that item.

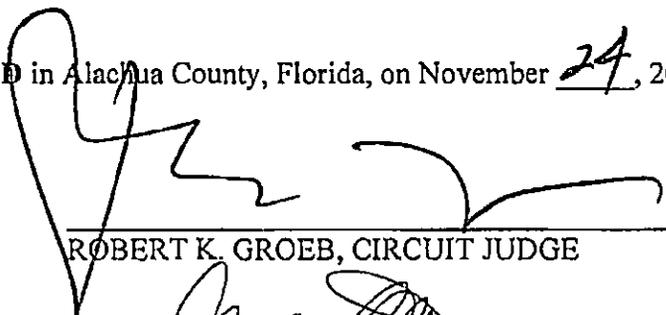
For these categories, the trial court awarded neither the fair market value nor the anticipated replacement cost. As previously discussed, without a clear explanation in the record for the trial court's deviation from the fair market value, these awards constitute an abuse of discretion.

In category (12.), the trial court awarded \$9,881.50 for money Ms. Cornell paid to Daniel Gardiner to finish or correct deficiencies in Appellant's work in her house. Ms. Cornell testified that she had paid Mr. Gardiner a total of \$9,881.50. However, she stated that she was only seeking repayment of \$1,891.50 for repainting, \$270.00 for baseboard and door trim, and \$2,200.00 for doors. Therefore, the trial court should only have awarded \$4,361.50 for this category.

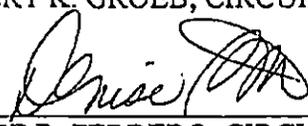
We affirm the restitution award as to all other claims and remand to the trial court with instructions to enter a new restitution order consistent with this opinion.

Accordingly, the restitution order is **AFFIRMED** in part, **REVERSED** in part, and **REMANDED**.

DONE AND ORDERED in Alachua County, Florida, on November 24, 2020.



ROBERT K. GROEB, CIRCUIT JUDGE



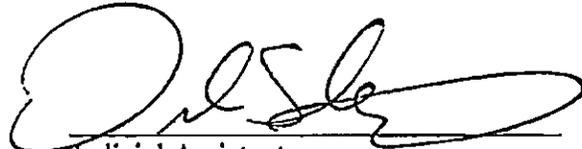
DENISE R. FERRERO, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing was furnished on November 25, 2020 to:

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Judicial Assistant