

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

LORETTA ANN BEZET,
Appellant,

v.

Case No.: 01-2018-AP-0013
LT No.: 01-2017-CT-1744-A

STATE OF FLORIDA,
Appellee.

ORDER ON APPEAL

HON. ROBERT K. GROEB, Circuit Judge
HON. JAMES M. COLAW, Circuit Judge
HON. DAVID P. KREIDER, Circuit Judge

An Appeal from the Alachua County Court, Judge Thomas M. Jaworski
For Appellant: Kristofer W. Eisenmenger, Esq., Assistant Public Defender
For Appellee: Lenora F. Folston, Esq., Assistant State Attorney

PER CURIAM.

Appellant seeks review of a restitution award. We find merit in Appellant's argument that some of the restitution awarded to Ms. Gysemar Carromero Colon was not supported by the evidence.

"It is axiomatic that it is the state's burden to show the amount of loss sustained." *Mansingh v. State*, 588 So. 2d 636, 638 (Fla. 1st DCA 1991). Although a court is not required to use fair market value as the only means of determining a restitution award, the amount of 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. *Id.* "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.*

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“Restitution must be proved by substantial, competent evidence and this evidence must be greater than mere *speculation*.” *K.R. v. State*, 155 So. 3d 507, 509 (Fla. 4th DCA 2015). *See also Holt v. State*, 220 So.3d 455, 456 (Fla. 1st DCA 2016). Testimony that frequently relies on words such as “probably,” “like,” and “I think” in connection with dollar figures “indicate that the victim was not sure of the amount, but was providing her “guesstimate” of the amount she paid.” *K.R. v. State*, 155 So. 3d at 509.

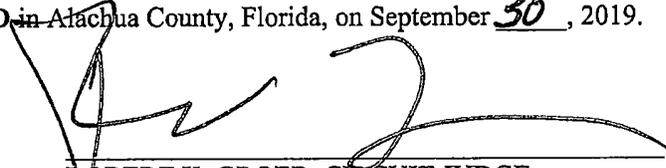
Here, Ms. Colon offered testimony that amounted to nothing more than unsubstantiated guesses about the original cost, manner of use, general condition, and/or depreciation of her laptop, Pandora bracelet and charms, shoes, clothing, and medical bills. In each of these cases, Ms. Colon was unable to provide testimony about the value of her losses without prefacing the dollar amount with one or more of the indicators of uncertainty discussed by the Fourth District Court of Appeal in *K.R. v. State*. Also, although Ms. Colon provided clear testimony about the original cost of the bedframe, the amount awarded did not reflect the testimony offered about the manner in which it was being used at the time of loss, the general condition and quality of the item, and its depreciation over the years. Therefore, the amount awarded for the losses listed here, totaling \$15,250.00 of the \$16,600.00 awarded to Ms. Colon, was not supported by competent, substantial evidence.

When the State fails to meet its burden of demonstrating the amount of a victim’s loss, an order imposing restitution should be reversed and remanded for another hearing. *Moore v. State*, 694 So.2d 836, 837 (Fla. 2d DCA 1997). *See also Thomas v. State*, 581 So.2d 992 (Fla. 2d DCA 1991) (remanding for another restitution hearing when the state did not meet its burden); *Herrington v. State*, 823 So.2d 286 (Fla. 1st DCA 2002) (remanding for another hearing where the restitution award was based on hearsay properly objected to); *Bennett v. State*, 944 So.2d 524 (Fla. 4th DCA 2006) (remanding for another hearing where the restitution award was based only on speculative testimony).

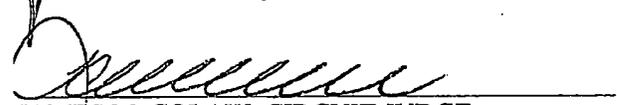
We affirm the restitution award as to all other claims and remand to the trial court with instructions to conduct an evidentiary hearing to determine the appropriate amount of restitution for Ms. Colon

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

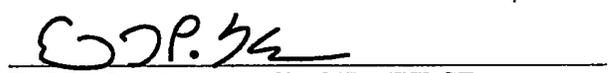
DONE AND ORDERED in Alachua County, Florida, on September 30, 2019.



ROBERT K. GROEB, CIRCUIT JUDGE



JAMES M. COLAW, CIRCUIT JUDGE



DAVID P. KREIDER, CIRCUIT JUDGE

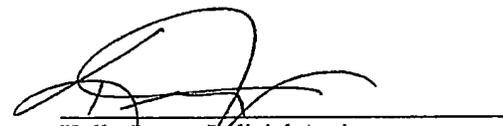
CERTIFICATE OF SERVICE

A copy of the foregoing was furnished on September 17, 2019 to:



Eric Henely, Esq.
eservice@pdo8.org

Andrew McCain, Esq.
eservice@sao8.org



Kelly Jones, Judicial Assistant