

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Holly Cabe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 14, 2023
Court of Appeals Case No.
23A-CR-214

Appeal from the
Marion Superior Court

The Honorable
Helen Marchal, Judge

Trial Court Cause No.
49D26-2110-CM-33198

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] After crashing her van into a house, Holly Cabe pled guilty to Class A misdemeanor operating a vehicle while intoxicated endangering a person and Class A misdemeanor operating a vehicle with an alcohol concentration equivalent of at least 0.15. The crash resulted in a total loss of the house and its contents, and Cabe was ordered to pay restitution to the residents. Cabe now appeals, arguing the trial court abused its discretion in determining the amount of restitution. We affirm.

Facts and Procedural History

- [2] Cabe smashed her van into the rental house of Darlene Gilbert and Sheila Jackson, causing the house to catch fire. Cabe was intoxicated, and her alcohol concentration equivalent was 0.189. Gilbert and Jackson had renter's insurance through State Farm, and State Farm determined the house and its contents were a total loss. Gilbert and Jackson submitted a claim for their losses. State Farm paid them each \$15,870 under their policy limit, but this amount did not cover all their damages.
- [3] The State charged Cabe with operating a vehicle while intoxicated endangering a person and operating a vehicle with an alcohol concentration equivalent of at least 0.15, both Class A misdemeanors. Cabe later pled guilty to both counts, and the trial court sentenced her to 365 days for each count, all suspended to

probation and to be served concurrently.¹ The court set the restitution hearing for a later date.

[4] At the restitution hearing, the State presented testimony from Gilbert and Jackson. As part of the claims process, State Farm instructed each of them to prepare an itemized list of what personal belongings had been destroyed and the estimated cost to replace each item. Gilbert testified that she recalled from memory what items she had in the house, and she based the replacement costs on what she actually paid for some items and conducted online research for the costs of others. This process took Gilbert a year. Jackson stated that she similarly recalled what belongings she had and searched online to find the replacement costs. State Farm combined these lists into a payment worksheet that delineated the lost items and replacement cost for each item and calculated the subtotals for Gilbert's and Jackson's respective losses. The trial court admitted the worksheet into evidence over defense counsel's objection. The State also presented photos of the damage to the house.

[5] The court found the State met its burden of establishing the restitution amount and ordered Cabe to make restitution in the amount of \$81,830 to Gilbert and \$59,622.14 to Jackson. These amounts reflected the replacement costs calculated by State Farm minus the \$15,870 already paid to Gilbert and

¹ Cabe did not raise a double-jeopardy claim.

Jackson, respectively. Finding Cabe unable to pay, the trial court reduced the restitution amount to a civil judgment.

[6] Cabe now appeals.

Discussion and Decision

[7] Cabe contends the evidence does not support the restitution order. A restitution order is a matter within the trial court's discretion, and we will reverse only upon a showing of abuse of that discretion. *Archer v. State*, 81 N.E.3d 212, 215 (Ind. 2017). A trial court abuses its discretion if no evidence or reasonable inferences from it support the restitution order. *Id.* at 216. The State bears the burden of establishing the restitution amount, and evidence is sufficient to support the amount if it provides a reasonable basis for estimating the victim's loss and does not subject the trier of fact to mere speculation or conjecture. *Garcia v. State*, 47 N.E.3d 1249, 1252-53 (Ind. Ct. App. 2015), *trans. denied*. In determining whether the trial court abused its discretion in ordering restitution, we do not reweigh the evidence. *Flowers v. State*, 154 N.E.3d 854, 871 (Ind. Ct. App. 2020).

[8] A trial court may order the defendant to make restitution to the victim based on the actual cost to repair the victim's property, or the cost of replacement if repair is inappropriate. Ind. Code § 35-50-5-3(a)(1). Cabe argues the estimated costs to replace Gilbert's and Jackson's property are "based on pure speculation and conjecture." Appellant's Br. p. 10. She maintains that the estimates do not

represent Gilbert’s and Jackson’s actual losses because they are “educated guesses” based on their memories. *Id.* at 12. But an estimate can provide a sufficient basis for valuing a victim’s loss when the estimate is corroborated by additional evidence. *See Lisk v. State*, 145 N.E.3d 838, 840 (Ind. Ct. App. 2020) (explaining that the State can meet its burden of establishing the restitution amount by offering testimony from the victim to support any estimates). The State Farm worksheet listed every item Gilbert and Jackson lost in the fire and provided a breakdown of how the replacement costs were calculated. To verify these calculations, Gilbert and Jackson explained their processes for determining what items they lost and estimating the cost to replace each item. This evidence provided a reasonable basis for calculating Gilbert’s and Jackson’s losses. The State met its burden of proof. Cabe’s argument is effectively an invitation for us to reweigh the evidence, which we will not do. *See Flowers*, 154 N.E.3d at 871. The reliability of the estimates and supporting testimony was a matter for the trial court.

[9] Cabe likens this case to *J.H. v. State*, 950 N.E.2d 731 (Ind. Ct. App. 2011). There, J.H. damaged the door of the victim’s home. Right before the disposition hearing, the victim provided the State with a purported estimate from a construction company showing a cost of \$1,117.65 to replace the door. The State informed the juvenile court of the dollar amount but did not enter the estimate into evidence or provide copies to defense counsel or the court, so it was unclear how the estimate was calculated or whether it came from a legitimate source. Although the State offered no other evidence to verify the

estimate, the trial court ordered J.H. to pay restitution in the amount of \$1,117.65. We reversed, holding the estimate was mere speculation or conjecture, and the juvenile court abused its discretion in ordering restitution in the amount of the estimate. Here, by contrast, State Farm, Gilbert, and Jackson compiled an itemized list which the State gave to Cabe before the restitution hearing and offered into evidence. And the State supported the estimates by having Gilbert and Jackson testify about how they calculated the replacement costs. This evidence provided a sufficient basis for the restitution order.

[10] The trial court did not abuse its discretion in determining the restitution amount.

[11] Affirmed.

Mathias, J., and Pyle, J., concur.