

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Valerie K. Boots
Ellen M. O'Connor
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Matthew J. Cole,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 29, 2022

Court of Appeals Case No.
21A-CR-2842

Appeal from the Marion Superior
Court

The Honorable Stanley Kroh,
Magistrate

Trial Court Cause No.
49D26-2106-F6-17710

Brown, Judge.

[1] Matthew J. Cole appeals the trial court's order of restitution. We affirm.

Facts and Procedural History

[2] In June 2021, Cole knowingly or intentionally exerted unauthorized control over a 2008 Ford owned by Gregory Sauer with the intent to deprive Sauer of the vehicle's value or use. Sauer's truck, which was a 2008 Ford Super Duty F-250 with mileage of approximately 166,721, was later recovered. On June 8, 2021, the State charged Cole with auto theft as a level 6 felony and two counts of theft as level 6 felonies. Cole and the State entered a plea agreement pursuant to which Cole agreed to plead guilty to auto theft as a level 6 felony, the State agreed to dismiss the other counts, and the parties agreed to a suspended sentence of 365 days with Cole completing community service. The agreement also provided that there would be a separate restitution hearing. Cole pled guilty pursuant to the plea agreement, and the court sentenced him to 365 days suspended to probation and ordered him to complete twenty-four hours of community service.

[3] On November 22, 2021, the court held a restitution hearing. Sauer testified that his truck was stolen on June 5, 2021, it was recovered the next day, and "it was pretty much trashed." Transcript Volume II at 22. He testified "[i]t had been taken through high grass," "[t]here was straw stuffed up underneath it from one end to the other," "[t]he bed was loaded down with trash," and "they had backed in to something with the tailgate down and broke the tailgate." *Id.* He testified the front headlight and the driver's mirror were smashed. When asked

“you didn’t have any damage to the vehicle prior,” he answered “[n]o.” *Id.* at 22-23. The court admitted photographs of the truck. When asked to describe the damage shown in the first photograph, Sauer testified that “[s]omehow, they hit something on the side and scraped down the side of something,” and “[s]o the front fender is scraped. The passenger door is scraped. The mirror is smashed and the headlight was smashed on this side of the vehicle.” *Id.* at 24. He indicated the scrape was not on the door prior to the truck being stolen. When asked to describe the damage shown in the second photograph, Sauer testified “[t]his showed the mirror being - they must have hit something when they were driving and they tied some kind of a windmill to - to the mirror as well.” *Id.* He indicated the side mirror was not damaged prior to the truck being stolen. When asked to describe the damage shown in the third photograph, Sauer testified “when we went to pick up the truck . . . it was loaded down with trash,” “[t]he tailgate has a huge dent in it which makes it inoperable because I can’t open - once we shut it, we didn’t know that we couldn’t open it anymore,” and “[t]he internal latches are broken as well.” *Id.* at 25. He indicated the tailgate was not broken prior to the truck being stolen. When asked to describe the damage shown in the fourth photograph, Sauer testified “[t]hat was the interior and in a few short hours I have no idea how somebody could destroy the inside like that” and “[i]t never looked like that before.” *Id.* He indicated the damage to the interior was not present prior to the truck being stolen.

[4] Sauer further testified that he went to Blossom Chevrolet and obtained an estimate for the cost to repair the damage to his truck. The estimate provided an itemization with respect to the headlamps, the fender, the front door, a side panel, and the tailgate, provided subtotals for parts and labor, and stated the total estimate was \$5,037.73. Cole did not object to the admission of the estimate. Sauer testified he owned the truck. He testified “when I got it back it wasn’t running” and “[t]he thing I didn’t get an estimate for was I had replaced the fuel pump, which was \$500.00 and there was a fuel injector that had gone bad because of whatever they poured in the gas - in the gas tank.” *Id.* at 28.

[5] On cross-examination, Sauer indicated that, when he reported the vehicle stolen, he told the officer that the truck had rear damage to the back right fender. When asked “[s]o there was already damage to the back-right fender,” Sauer replied “at the very corner of the right side of the truck there was damage to the vehicle. And that is the only damage on the truck.” *Id.* at 29. When asked “what kind of damage exactly was that,” he answered “I jack-knifed by [sic] trailer and put a crinkle in the - right at the rear corner of the bed.” *Id.* When asked “so that’s likely something that would have been included in your estimate correct,” Sauer answered “[n]o. It was not included in the estimate. That is why I had asked them if – what it would cost to do the whole vehicle and he just gave me a ballpark of around \$2800.” *Id.* When asked “[b]ut there was prior damage, right,” he replied: “Yes, there was. And – and I said that before. At the right corner – rear quarter of the truck, there was damage and over one of the wheel wells there was some – a little bit of rust showing.” *Id.*

[6] The trial court stated “the Court does believe that both the photos and Mr. Sauer’s testimony and the receipt from the estimate from Blossom Chevrolet – they all corroborate each other,” “it says there is a fender repair but it is for the left fender,” and “[t]here is no indication in the estimate for a right rear fender being repaired.” *Id.* at 32. Cole stated “last time I was in this courtroom I was very honest about what I’ve done. I took that man’s truck. Somebody gave me the keys. It doesn’t matter how it all transpired. I am in possession of that man’s truck.” *Id.* at 33. He stated “I drove it through high grass and I believe I remember hitting a bush and the bush I think cracked the mirror,” “[o]ther than that, the truck was trashed,” “[h]e used it as a work truck,” “[i]t was covered in grease on the inside,” and “I mean he is working. It is \$5700.00 is worth more than what the truck is worth itself. I mean just the body.” *Id.* at 33-34. The court stated “I find . . . Sauer’s credibility to be pretty high,” “I believe what he had to say,” “while you had the truck, . . . you stole the truck, it was damaged while you had it,” and “[y]ou should be responsible for repairing it and that is just how the Court sees it.” *Id.* at 34. Cole stated “[t]he man has just got a free truck Your Honor” and “\$2000.00 truck.” *Id.* The court entered an order of restitution against Cole in the amount of \$5,037.73 and entered the order as a civil judgment.

Discussion

[7] Cole asserts the trial court abused its discretion in ordering him to pay \$5,037.73 in restitution. He argues he agreed to pay restitution as determined at a hearing but “expected to pay a fair and equitable restitution for an old, used

work truck that he believed was only worth \$2,000.” Appellant’s Brief at 7. He argues Sauer initially claimed his truck had no prior damage but later admitted there was prior damage which Sauer said was not included on the Blossom estimate. He argues “without the testimony of the estimator, it is difficult to ascertain whether damage to the truck bed/tailgate/back bumper was as a result of a previous jack knife accident or the result of Matthew Cole’s driving through tall grass.” *Id.* at 9. He asserts “[i]t was not a reasonable inference to conclude all of the damage cited in the evidence was attributable to Matthew Cole when the truck was old and Gregory Sauer first denied and then admitted the truck had been previously damaged.” *Id.* at 9-10.

[8] The primary purpose of restitution is to vindicate the rights of society and to impress upon the defendant the magnitude of the loss the crime has caused. *Gonzalez v. State*, 3 N.E.3d 27, 29 (Ind. Ct. App. 2014). Restitution also serves to compensate the offender’s victim. *Id.* Indiana law authorizes the trial court to order restitution for damages incurred as a result of the crime. *See* Ind. Code § 35-50-5-3. Ind. Code § 35-50-5-3(a) provides in part that the court shall base its restitution order “upon a consideration of: (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate)” Any loss proven to be attributable to the defendant’s charged crimes is recoverable as restitution. *Smith v. State*, 990 N.E.2d 517, 520 (Ind. Ct. App. 2013), *trans. denied*. The amount of loss is a factual matter determined on the presentation of evidence. *Id.* We will reverse an order of restitution only on a showing of an abuse of discretion. *Id.* Under

our abuse of discretion standard, we will affirm the trial court's decision if there is any evidence supporting the decision. *Id.* We will not reweigh the evidence. *Id.*

[9] The record reveals that Sauer obtained an estimate of the cost to repair the damage to his truck, testified in detail regarding the damage, and was cross-examined regarding the prior damage. The court heard testimony from Sauer and Cole regarding the extent to which the truck was already damaged when Cole stole it and Sauer's testimony that the damage which was not caused by Cole was not included in the estimate, and the court was able to consider the itemized estimate and the extent to which the descriptions in the estimate corroborated the testimony. The evidence supports the conclusion that the loss was attributable to Cole's theft. Further, the court based its restitution order on a consideration of the actual cost of repair as authorized by Ind. Code § 35-50-5-3(a). We will not reweigh the evidence and will affirm if any evidence supports the order. *See Smith*, 990 N.E.2d at 520. Based upon the record, we find no abuse of discretion.

[10] For the foregoing reasons, we affirm the trial court's order of restitution.

[11] Affirmed.

Mathias, J., and Molter, J., concur.