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IN THE
COURT OF APPEALS OF INDIANA

D.S.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 42A01-0901-JV-19
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0808-JD-29

July 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

D.S. appeals the juvenile court's order requiring him to pay $12,637.50 in restitution to one of his victims. Concluding the evidence is sufficient to support the juvenile court's restitution order, we affirm.

FACTS AND PROCEDURAL HISTORY

In March 2008, D.S. and another juvenile broke into a storage shed, where they vandalized and damaged property belonging to Dolan Tabler and Ted and Becky Blagrave. The two juveniles damaged Tabler's sport boat by breaking the windows, tearing out seats, and spray painting the inside and outside of the boat. They also damaged the Blagraves' two antique boats, including damage to the boats' windows, cabin door, bridge roof, paint, gauges, and cushions. The juveniles broke the windows in the Blagraves' semi-tractor and convertible and damaged the paint and other parts of the two vehicles, and they caused damage to the storage shed.

The State alleged D.S. committed acts that would be trespass and criminal mischief, both Class A misdemeanors, if committed by an adult. The juvenile court found D.S. to be a juvenile delinquent as alleged, ordered D.S. to be made a ward of the Department of Correction, suspended the commitment to supervised probation for one year, and ordered D.S. to pay restitution as part of his probation. At a restitution hearing, the victims offered testimony and the State introduced exhibits estimating the cost of the damage to the victims' property caused by D.S. and the other juvenile. D.S. did not

object. The juvenile court ordered D.S. to pay $14,332.50 in restitution, with $12,637.50 to be paid to the Blagraves, $250.00 to Tabler, and $1,445.00 to Tabler's insurer.[1]

DISCUSSION AND DECISION

On appeal, D.S. challenges only the amount of restitution he was ordered to pay to the Blagraves.

"The principal 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. Restitution also serves to compensate the offender's victim." *Pearson v. State*, 883 N.E.2d 770, 772 (Ind. 2008) (citation omitted), *reh'g denied*. An order of restitution is a matter within the trial court's discretion, and we reverse only on a showing of an abuse of that discretion. *In re J.L.T.*, 712 N.E.2d 7, 12 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*. An abuse of discretion occurs when the trial court's determination is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.*

Indiana Code § 31-37-19-5(b)(4) provides that the trial court may "[o]rder the child to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing." "It is well settled that restitution must reflect actual loss incurred by a victim. The amount of actual loss is a

[1] The juvenile court found D.S. and his juvenile accomplice to be jointly and severally liable and ordered D.S. to pay one-half of: (1) the Blagraves' $25,275.00 damages; (2) Tabler's $500.00 damages; and (3) Tabler's insurer's $2,890.00 damages. The juvenile court ordered D.S., who testified he was employed at Dairy Queen, to pay $35.00 per week until his restitution was paid.

factual matter which can be determined only upon presentation of evidence." *T.C. v. State*, 839 N.E.2d 1222, 1225 (Ind. Ct. App. 2005) (internal citation omitted), *reh'g denied*.

D.S. argues the evidence was insufficient to support the juvenile court's order that the Blagraves had incurred a loss in the amount of $25,275.00. However, D.S. did not object to the evidence of the amount of their loss. A party's failure to make a specific and timely objection to the trial court's receipt of evidence concerning the amount of restitution waives that as an issue for appeal. *Long v. State*, 867 N.E.2d 606, 618 (Ind. Ct. App. 2007) (finding defendant's failure to object to evidence regarding victim's amount of loss waived issue on appeal), *reh'g denied*; *Kellett v. State*, 716 N.E.2d 975, 981 (Ind. Ct. App. 1999) (holding defendant waived challenge to restitution order regarding payment of victim's medical costs where defendant failed to object to the ledger of medical expenses compiled by the victim). *But see Rich v. State*, 890 N.E.2d 44, 48 (Ind. Ct. App. 2008) (explaining recent caselaw indicates appellate courts will review trial court's restitution order even where defendant did not object when trial court exceeded statutory authority in entry of restitution order), *trans. denied*.

Waiver notwithstanding, the juvenile court did not abuse its discretion in ordering D.S. to pay $12,637.50 in restitution for the Blagraves. During the restitution hearing, Ted and Becky Blagrave testified that their property damaged by D.S. was uninsured, and they submitted an itemized statement seeking restitution in the amount of $29,575.00 for damage to their two antique boats, a semi-tractor, a car, and the storage shed. (State's

Ex. 3.) This same exhibit had been admitted into evidence, along with photographs and other documents, in D.S.'s fact-finding hearing when Ted testified about the damage to the Blagraves' property.[2] Becky testified that their two boats that were damaged--an Owens Cruiser and a Pen Yan--were antique boats made of solid mahogany, had been restored by Ted, and were both operational. Ted testified he had spent five years restoring the boats and explained that the estimates for the various items on the boats were based on what he had spent on such items during the restoration process. Ted also testified that his semi-tractor--which was a 1988 or 1989 International Tran Star Eagle with a 430 horsepower Detroit engine, Allison automatic transmission, and air-ride suspension--was not licensed to drive on the road but was operational before being damaged and was "a pretty good old truck." (Tr. at 23.) He testified he had obtained the semi-tractor by "trad[ing] a bunch of stuff for it" and had it in storage for approximately one year. (*Id.*) Ted indicated he was not going to fix the damage to the semi-tractor because it was "too much work [and] too much money" to do so and testified regarding the replacement cost of the semi-tractor. (*Id.*) Ted also testified regarding the repair cost for the damage D.S. caused to his 1989 LeBaron convertible. He testified he had just rebuilt the engine, it was running before D.S. damaged it, and it was unlikely that he would keep it because it was now "junk." (*Id.* at 20.) Ted explained that his estimates

[2] The transcript from the fact-finding hearing has not been included in the record on appeal.

for the costs of the Blagraves' damaged property were based on his experience with the items involved.

The Blagraves' cost estimate for their damaged property was $29,575.00. The juvenile court found their total damage to be $25,275.00 and ordered D.S. to pay half of that amount, or $12,637.50. D.S. contends the order was erroneous because the State did not provide documentation, like the insurance estimate that had been provided to establish Tabler's property damage, to support the estimates for the Blagraves' damaged property. We disagree. The Blagraves did not have insurance on the property they kept in the storage shed, but Ted provided estimates for the damaged items based on his experience in restoring and working on such items. While the transcript from the fact-finding hearing was not requested by D.S. for this appeal, the record before us indicates the juvenile court had, during D.S.'s fact-finding hearing, heard testimony and seen photographs regarding the Blagraves' damaged property and the amount of their loss.[3] The juvenile court's determination that D.S. was required to pay $12,637.50 to the Blagraves in restitution is not clearly against the logic and effect of the facts and circumstances before the court, and we find no abuse of discretion. *See e.g.*, *In re J.L.T.*, 712 N.E.2d at 12 (affirming restitution order where victim estimated cost of repair or replacement of cemetery headstones damaged by juveniles at approximately $14,000.00,

[3] D.S. did not request a copy of the fact-finding hearing in his notice of appeal. Indiana Appellate Rule 9(F)(4) provides, in part, "If the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence."

which was based on victim's cost of headstone he had purchased for his wife two years earlier). *Cf. Smith v. State*, 471 N.E.2d 1245, 1249 (Ind. Ct. App. 1984) (finding deputy prosecutor's unsworn statement regarding victim's medical expenses insufficient to support court's restitution order), *reh'g denied*, *trans. denied*.

Affirmed.

BAKER, C.J., and BARNES, J., concur.