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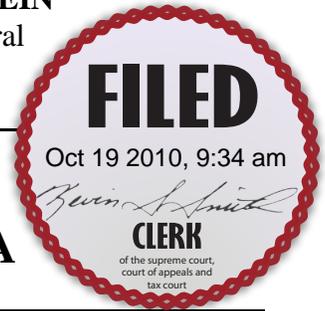
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**IN THE  
COURT OF APPEALS OF INDIANA**

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M.C., )  
)  
Appellant/Defendant, )  
)  
vs. ) No. 49A02-1003-JV-437  
)  
STATE OF INDIANA, )  
)  
Appellee/Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Geoffrey Gaither, Magistrate  
Cause No. 49D09-0910-JD-3422

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**October 19, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Defendant M.C. appeals the juvenile court's restitution order following his adjudication as a delinquent child for committing what would be theft<sup>1</sup> as a class D felony if committed by an adult. Concluding there is sufficient evidence to support the restitution order, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

In October 2009, fifteen-year-old M.C. and three other juveniles broke into a Foot Locker retail store and took several pairs of shoes. The State alleged M.C. was a delinquent child for committing what would be class C felony burglary and class D felony theft if committed by an adult. One month later, M.C. admitted the theft allegation and the State dismissed the burglary allegation pursuant to the terms of a plea agreement. The juvenile court placed M.C. on probation and left restitution open for 45 days.

The first restitution hearing was set for February 2010. A Foot Locker representative was present and met with defense counsel. Tr. 10. A disagreement arose as to whether the retail price or the wholesale cost of the shoes should be used to determine restitution, and the hearing was continued. Tr. 11. At a subsequent restitution hearing, the Foot Locker representative was unavailable, and the State presented an e-mail from a Foot Locker representative that the wholesale cost of shoes taken in the theft was \$459.38. App. 10. The State also presented written evidence that damages to the Foot Locker's door totaled approximately \$2182.00. Tr. 14. The State asked the juvenile court to equally divide the \$2641.38 total damages among the four juveniles and order each one to pay Foot Locker

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<sup>1</sup> Ind. Code § 35-43-4-2 (2009).

\$660.45. Following the hearing, the juvenile court authorized M.C. to participate in a restitution work program and ordered him to pay Foot Locker \$660.45 in restitution. M.C. appeals.

### **DISCUSSION AND DECISION**

M.C.'s sole contention is that there is insufficient evidence to support the restitution award. A restitution order is within the trial court's discretion and will be reversed only upon a finding of an abuse of that discretion. *J.P.B. v. State*, 705 N.E.2d 1075, 1077 (Ind. Ct. App. 1999). An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *C.C. v. State*, 831 N.E.2d 215, 217 (Ind. Ct. App. 2005).

Indiana Code § 31-37-19-5(b)(4) (2009) provides that the trial court may order a juvenile delinquent 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. *T.C. v. State*, 839 N.E.2d 1222, 1225 (Ind. Ct. App. 2005). The amount of actual loss is a factual matter, which can be determined only upon a presentation of evidence. *Id.*

Here, at the restitution hearing, the State submitted written evidence that the Foot Locker's total damages were \$2641.38. This evidence supports the trial court's restitution order, which equally divided the damages among the four juveniles. The juvenile court did not abuse its discretion in ordering M.C. to pay Foot Locker \$660.45 in restitution.

The judgment of the juvenile court is affirmed.

DARDEN, J., concurs.

BROWN, J., dissents with opinion.

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	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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**BROWN, Judge, dissenting**

I respectfully dissent and would remand for an evidentiary hearing. No testimony was presented at the restitution hearing held in this cause. The transcript reflects only statements by counsel and responses to questions from the trial court by individuals, some of whom are unidentified in the record. Counsel repeatedly requested an evidentiary hearing. Based on this record I conclude that there is an inadequate factual basis for the restitution order. See, e.g., T.C. v. State, 839 N.E. 2d 1222 (Ind. Ct. App. 2005) (remanding to the trial court to conduct another restitution hearing), reh'g denied.