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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2020-2021

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CR-19-0249

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Dezra Renee King

v.

State of Alabama

Appeal from Covington Circuit Court  
(CC-19-298)

On Return to Remand from Order of June 24, 2020

MINOR, Judge.

Dezra Renee King appeals the circuit court's restitution order directing her to pay \$9,183.54 for items King took from JoAnn Ridgeway's

house. We consider whether the State offered enough evidence of the value of the items King took from Ridgeway's house to support the circuit court's restitution award and whether the amount of restitution includes an award for damages based on conduct King says she did not admit to and was not prosecuted for.<sup>1</sup> We hold that the State offered sufficient evidence showing the value of the items King took from Ridgeway's house, but, because part of the restitution award was for items not listed in the information<sup>2</sup> to which King pleaded guilty, we hold that the circuit court

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<sup>1</sup>King argues, among other things, that the circuit court did not include in its restitution order the facts and circumstances supporting the order. We agree, so we remanded the case to the circuit court for that court "to supplement or amend its restitution order to state its findings and the underlying facts and circumstances supporting its restitution award." The record on return to remand shows the circuit court complied with our instructions.

<sup>2</sup>The information charged:

"Dezra Renee King, whose name is unknown to the District Attorney other than as stated, did knowingly obtain or exert unauthorized control over and/or did obtain by deception control over, to-wit: miscellaneous household appliances, miscellaneous household furniture, television(s), miscellaneous household electronics, and/or miscellaneous household furnishings, a further or more detailed description being unknown to the grand jury, the property of JoAnn Ridgeway ...."

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erred in requiring King to pay restitution for those items. We thus affirm in part, reverse in part, and remand.

King pleaded guilty on the State's information to first-degree theft of property, see § 13A-8-3, Ala. Code 1975, and the circuit court sentenced King to 36 months in prison. The circuit court split that sentence and ordered King to serve six months in jail, followed by probation.

At the restitution hearing the next month, Ridgeway testified that she and her son, David Martin, own a house in Opp, Alabama. King and her husband lived at the house with Martin, who, Ridgeway testified, gave King and her husband permission to live there. For reasons unrelated to this case, King and Martin wound up in jail, and, although King got out of jail, Martin did not. Ridgeway told King that she could no longer live at the house. Ridgeway said that, because Martin was in jail, she visited the house every Sunday to check the mail and to make sure everything was okay.

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(C. 8.)

When visiting the house one Sunday, Ridgeway found King in the house, even though Ridgeway had told King after her arrest she could not live there. Ridgeway returned the next day with an eviction letter for King. That same day Ridgeway turned off the electricity at the house.

Two days later Ridgeway returned to the house and saw that all the windows were open. Ridgeway went inside and found items "just thrown everywhere." Several items were missing from the house. (R. 14.) Ridgeway prepared a list of the missing items. Some items were later returned; for the items that were not returned, Ridgeway went to a Wal-Mart store, to Steve's Appliances store, and to furniture stores to compile prices for those items. Ridgeway testified the replacement value of the items not returned was \$9,722.51.<sup>3</sup> She agreed that she had used many of the items for years before King took them.

The circuit court said during Ridgeway's testimony that it would "accept as a fact that anything used is worth less than a new one" and

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<sup>3</sup>Ridgeway agreed on cross-examination that the list had some mathematical errors and duplications and that the value of the items should be reduced by the amount of the mathematical errors and duplications, resulting in the amount of \$9,183.54.

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that it would "accept that everything on that list is [of] less value than the new one that it would take to replace it." (R. 24.) But the circuit judge said: "That does not mean I'm not [going to] award the full value of replacement cost." (R. 24.)

On cross-examination Ridgeway testified that the Bose brand radio taken from the house was a gift she bought Martin for Christmas several years earlier. She testified that several other items on the list also belonged to Martin: the Braun brand electric razor, the pants, walking shorts, shirts, underwear, socks, and shoes. Ridgeway explained that, because Martin was in jail when King took the items from the house, Ridgeway "handled everything" for all the property taken from the house, "whether it was mine or his." (R. 40.)

King testified at the restitution hearing that she did not take the Bose radio, the Braun electric razor, or the men's clothing from the house.

The circuit court ordered King to pay \$9,183.54 to Ridgeway. (Suppl. R. 5.) King moved the circuit court to reconsider its award of restitution. The circuit court denied King's motion, and King appealed.

I.

King argues the State produced insufficient evidence of the value of the items King took from Ridgeway's house. She says the only evidence the State offered to prove the value of the items was Ridgeway's testimony, but, King says, the State offered no evidence indicating how Ridgeway arrived at the values she assigned the items. Even so, King says, Ridgeway's valuation of the items is flawed because, she says, (1) the items were not new and Ridgeway benefited from their use for several years; (2) Ridgeway could not sell the items for the amount she claimed in restitution; and (3) Ridgeway's valuation of some items was inflated from what it would cost Ridgeway to purchase those items new.

" 'The particular amount of restitution is a matter which must of necessity be left almost totally to the discretion of the trial judge.' Clare v. State, 456 So. 2d 355, 356 (Ala. Crim. App. 1983), aff'd, 456 So. 2d 357 (Ala. 1984). Moreover, the exercise of '[t]hat discretion should not be overturned except in cases of clear and flagrant abuse.' Id."

Ex parte Stutts, 897 So. 2d 431, 433 (Ala. 2004). "Whether an expense is reasonable is a matter addressed to the sound discretion of the trial court." Welcher v. State, 504 So. 2d 360, 365 (Ala. Crim. App. 1987) (quoting Strough v. State, 501 So. 2d 488, 491 (Ala. Crim. App. 1986)).

Ridgeway testified that, to calculate the value of the items King took from the house, she went to Wal-Mart, to Steve's Appliances store, and to furniture stores to find out what it would cost to replace the items. The State introduced Ridgeway's list of the items taken from the house and the value she assigned each item. Ridgeway's testimony about the value of the items and her testimony about how she arrived at that value is enough to support the circuit court's award of restitution. See Hagler v. State, 625 So. 2d 1190, 1191 (Ala. Crim. App. 1993) ("We conclude that the mother's testimony alone, without the introduction of the actual medical and hospital bills, provided a sufficient basis for the trial court to determine the reasonableness of the claimed expenses."); see also Henry v. State, 468 So. 2d 896, 901-02 (Ala. Crim. App. 1984) (holding that, although there must be some evidence of how the value of the items was determined, "the victim need not produce the actual sales receipts for the property stolen").

King's criticism of Ridgeway's valuation of the items based on how much it would cost her to buy the items new also has no merit. A circuit court is not bound by the fair-market value of the items when awarding

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restitution and may, when appropriate, award replacement value. See, e.g., Ex parte Theodorou, 53 So. 3d 151,159 (Ala. 2010); Richardson v. State, 603 So. 2d 1132 (Ala. Crim. App. 1992).

The circuit court did not err in ordering restitution based on Ridgeway's testimony of the value of the items and how she calculated that value.

## II.

King says she should not have to pay restitution for the Bose radio or the Braun electric razor because, she says, Ridgeway testified that those items belonged to Martin and the information to which King pleaded guilty lists Ridgeway as the owner of the property. Put another way, King argues she pleaded guilty only to taking items that were "the property of JoAnn Ridgeway," but not, she says, to taking items that belonged to Martin.<sup>4</sup> This argument is meritless.

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<sup>4</sup>At the restitution hearing King denied she took many items Ridgeway said were missing from the house, including the Bose radio, the Braun electric razor, and the men's clothing items. We address in Part III King's contention that she did not take the men's clothing items, but as to the Bose radio and the Braun electric razor, King pleaded guilty on information to taking "miscellaneous household electronics." She cannot,



Section 15-18-65, Ala. Code 1975, provides, in part:

"[I]t is essential to be fair and impartial in the administration of justice, that all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for any pecuniary loss, damage or injury as a direct or indirect result thereof."

Section 15-18-66(4), Ala. Code 1975, defines "victim" as "[a]ny person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant's criminal activities." The term "victim" may include "'persons who were not necessarily the primary object of the defendant's criminal conduct.'" Grace v. State, 899 So. 2d 302, 308 (Ala. Crim. App. 2004) (quoting Butler v. State, 608 So. 2d 773, 775 (Ala. Crim. App. 1992)).

The State's information—to which King pleaded guilty—alleged that King took "miscellaneous household appliances, miscellaneous household

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after pleading guilty to taking those items, claim at the restitution hearing that she did not take them. See Simmons v. State, 574 So. 2d 1046 (Ala. Crim. App. 1990). In this part of the opinion, then, we address only King's argument that pleading guilty to taking items listed in the information as belonging to one victim insulates a defendant from paying restitution for those items if it turns out those items belonged to someone else.

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furniture, television(s), miscellaneous household electronics, and/or miscellaneous household furnishings" which, it alleged, was "the property of JoAnn Ridgeway." (C. 8.) The Bose radio and the Braun electric razor that Ridgeway testified were missing from the house are, at the least, "household electronics" as alleged in the indictment. That some of the household electronics King pleaded guilty to taking belonged to Martin and not to Ridgeway is, in this case, irrelevant. Cf. McKeithen v. State, 480 So. 2d 36, 37-38 (Ala. Crim. App. 1985) ("There is no material variance between an indictment which charges that the property taken was the personal property of a named individual and proof showing that the property belonged to another." (quoting Raines v. State, 429 So. 2d 1104, 1106 (Ala. Crim. App. 1982))). Ridgeway testified that she jointly owned the house with Martin, that she bought all the items that King took from the house, and that, because Martin was in jail when King took the items from the house, she handled everything relating to the stolen property "whether it was mine or his." (R. 40.) Under § 15-18-66(4), Ala. Code 1975, Martin is a victim of King's theft—that is, he "suffered a direct

or indirect pecuniary damage as a result" of the theft—and the circuit court had discretion to order King to pay restitution for Martin's items.

### III.

King also argues that she should not have to pay restitution for the men's clothing items—the pants, walking shorts, shirts, underwear, socks, and shoes—because, she says, the information to which she pleaded guilty did not allege that she took those items from Ridgeway's house.

Section 15-18-65, Ala. Code 1975, provides that "all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for any pecuniary loss, damage or injury as a direct or indirect result thereof." Section 15-18-66(1), Ala. Code 1975, defines "criminal activities" as "[a]ny offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant." A circuit court can order a defendant to pay restitution to the victim of a crime only if:

" '(1) his victim suffered direct or indirect pecuniary loss as a result of the criminal activity of which the defendant has been convicted, or (2) he admitted to other criminal conduct during the proceedings that was the proximate cause of the victim's pecuniary loss or damages.' "

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Heupel v. State, 113 So. 3d 695, 699 (Ala. Crim. App. 2012) (quoting B.M.J. v. State, 952 So. 2d 1174, 1176 (Ala. Crim. App. 2006)).

King pleaded guilty to taking "miscellaneous household appliances, miscellaneous household furniture, television(s), miscellaneous household electronics, and/or miscellaneous household furnishings." (C. 8.) In ordering King to pay restitution for the men's clothing items, the circuit court found that "[a]ll of the items Ridgeway testified about at the hearing fall within the categories of items listed in the Information." (Suppl. R. 7.) We disagree.

The clothing items that Ridgeway testified were missing from the house were not "television(s)," "household electronics," "household appliances," or "household furniture." That leaves for our consideration "miscellaneous household furnishings." But whatever items may be considered "household furnishings," clothing items do not fall within that category. See, e.g., Daniels v. Daniels, 626 So. 2d 645, 646 (Ala. Civ. App. 1993) (listing separately, in division of assets in divorce action, the wife's receipt of "personal effects and clothing" and "household furnishings"); Phillips v. Phillips, 489 So. 2d 592, 593 (Ala. Civ. App. 1986) (listing

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separately in divorce action the wife's purchase during the marriage of "household furnishings" and "clothing and other personal items"); Warren v. Warren, 386 So. 2d 1166, 1168 (Ala. Civ. App. 1980) (listing separately in divorce action the wife's possession of "clothing" and "various household furnishings").

We note that a liberal reading of the word "furnishing" could—at least under some definitions of the word—include clothing. See Merriam Webster's Collegiate Dictionary 508 (11th ed. 2020) (including in the definition of the word furnishing "an article or accessory of dress"). But see id. (offering as an alternative definition "an object that tends to increase comfort or utility; esp: an article of furniture for the interior of a building"). But however broad the word "furnishing" standing alone may be, in the information to which King pleaded guilty the word "household" immediately precedes—and thus modifies—the word "furnishing." So even if a "furnishing" can mean an article or accessory of dress, a "household furnishing" must mean some subset of articles or accessories of dress. See Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv., 139 S. Ct. 361, 368, 202 L. Ed. 2d 269 (2018) ("Adjectives modify nouns—they pick

out a subset of a category that possesses a certain quality."). Thus, even if we consider that "furnishing" may mean an article or accessory of dress, the more reasonable interpretation of "household furnishings" means that subset of articles or accessories of dress that may be said to "dress" a house.<sup>5</sup>

Because we do not believe that the clothing items Ridgeway testified were missing from the house fall within any of the categories of items to which King pleaded guilty to taking, the circuit court improperly ordered King to pay restitution for those items. See Heupel, 113 So. 3d at 699. Thus, we reverse that part of the circuit court's restitution order requiring King to pay \$1,370 for the pants, walking shorts, shirts, underwear, socks, and shoes, and we remand this case for the circuit court to vacate that part of its order not in compliance with this opinion. The circuit court

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<sup>5</sup>See, e.g., Klyce v. Klyce, 429 So. 2d 1081, 1082-83 (Ala. Civ. App. 1983) ("During their marriage the parties purchased a []house. They also bought certain household furnishings for that house." (emphasis added)); McClelland v. McClelland, 841 So. 2d 1264, 1267 (Ala. Civ. App. 2002) ("[T]he parties ... spent large amounts on household furnishings and decorative items for two homes." (emphasis added)), overruled on other grounds by Johnson v. Johnson, 191 So. 3d 164 (Ala. Civ. App. 2015).

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should make due return to this Court within 42 days of the release of this opinion.

**AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS ON RETURN TO REMAND.**

Windom, P.J., and Kellum, Cole, and McCool, JJ., concur.