



Delinquency

12/30/2005

In **T.C. v. State**, 839 N.E.2d 1222 (Ind. Ct. App. 2005), the Court affirmed in part, reversed in part, and remanded with instructions the juvenile court's restitution order. The juvenile and a friend broke into Bicycle Outfitters and stole several items and cash. The State filed a petition alleging the juvenile's delinquency for committing acts that would constitute receiving stolen property and theft if committed by an adult. The juvenile was adjudicated delinquent and placed on formal supervised probation upon his admission to an act that would be receiving stolen property if committed by an adult. The terms of the probation included paying restitution. Following a restitution hearing, the juvenile court determined that the victim sustained damages in the amount of \$3120 and ordered the juvenile to pay one-half of that amount in weekly payments of \$12. The juvenile appealed raising the issues of whether (1) the juvenile court erred when it ordered him to pay restitution without inquiring into his ability to pay; (2) the juvenile court erred when it ordered him to serve one day in secured detention for each missed payment; (3) the State presented sufficient evidence to support the restitution order; and (4) the appropriate measure of the victim's damages is the retail value of the stolen merchandise.

Because the trial court ordered restitution as a condition of the juvenile's probation, the court was required to determine his ability to pay but did not do so. Hence, the trial court abused its discretion. Id. at 1224. The Court noted that I.C. 31-37-19-5, which allows the juvenile court to order a child to pay restitution, unlike the statute that governs restitution in the adult context, does not require that the juvenile court inquire into the juvenile's ability to pay. Citing to M.L. v. State, 838 N.E.2d 525, 527 (Ind. Ct. App. 2005), however, the Court held that "equal protection and fundamental fairness concerns require that a juvenile court must inquire into a juvenile's ability to pay before the court can order restitution as a condition of probation."

The trial court's determination that the juvenile would serve one day in secured detention for any week he failed to make a restitution payment did not constitute error because the court expressly provided for a hearing before the penalty was imposed. T.C. at 1225. The Court cited to I.C. 31-37-22-3 for the hearing requirement.

There was an inadequate factual basis for the trial court's restitution order. Id. at 1227. The Court noted that (1) I.C. 31-37-19-5(b)(4) allows the juvenile court to order restitution if the victim provides reasonable evidence of the victim's loss, which the

juvenile may challenge at the dispositional hearing; (2) restitution must reflect actual loss incurred by a victim; and (3) the actual loss is a factual matter which can be determined only upon presentation of evidence. The Court reviewed the evidence presented and concluded that the victim was equivocal regarding the amount of his actual loss. On remand, the juvenile court is to conduct another restitution hearing to determine the amount of the victim's damages. Id. at 1227-28.

Depending upon the evidence presented on remand, the trial court may award restitution based upon the merchandise's retail value, but retail value is not necessarily the appropriate measure of damages in every case. Id. at 1228. The Court noted that this is a case of first impression in Indiana and looked to other jurisdictions for guidance.

Judge Baker concurred with separate opinion to address the majority's conclusion regarding the appropriate measure of damages. He opined that the better approach is to conclude that the appropriate measure of damages is always the retail value of the stolen items, because "to require a merchant to calculate wholesale, as opposed to retail, value of stolen merchandise will entail, among other things, an examination of all manner of overhead costs and lost opportunities for sale." Id.