

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-09-257
- vs -	:	<u>OPINION</u> 8/8/2011
RAMSEY POWELL,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 10CRB03462

Mary K. Dudley, Hamilton City Prosecutor, 345 High Street, 7th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Christopher Frederick, 304 North Second Street, Hamilton, Ohio 45011, for defendant-appellant

POWELL, P.J.

{¶1} Hamilton Municipal Court ordered appellant Ramsey Powell to pay \$500 in restitution for damage he caused to a riding mower. We reject the argument that the restitution amount was in error and affirm the restitution as ordered.

{¶2} Powell pled no contest and was convicted of criminal damaging after it was alleged in the complaint that he damaged the tires and wires of a riding lawn mower. At

the restitution hearing, an estimate was submitted that listed the costs of parts, including the tires and wiring components, at \$425.44, with labor at \$40 an hour for a total of \$652.69. Powell's counsel indicated, "My client really admits that he did in fact destroy the tires, the four tires [inaudible] * * *. But the other items I would seriously call on question specifically the labor * * *." [sic] The municipal court indicated it would order restitution in the amount of \$500 "based on an adjustment to the amount of the labor."

{¶13} Powell now raises a single assignment of error in which he asserts that the municipal court erred in ordering \$500 in restitution because the evidence does not support an order of \$500 for four lawn mower tires.

{¶14} First, we note the city of Hamilton did not submit a brief for this appeal. Therefore, App. R. 18(C) provides that this court, in determining the appeal, may accept an appellant's statement of the facts and issues as correct and reverse the judgment if appellant's brief reasonably appears to sustain such action.

{¶15} R.C. 2929.28(A), states in pertinent part that a court imposing a sentence upon an offender for a misdemeanor may impose a financial sanction and, "[i]f the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

{¶16} "(1) * * * restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this division if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim."

{¶17} R.C. 2929.28(A)(1) also states that "[i]f the court imposes restitution, the

court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender."

{¶8} The record indicates that an estimate was provided that outlined the material costs of the tires and wire components of the riding mower, and a rate and estimate for labor. Contrary to Powell's assertion, the damage was not confined to four mower tires. The complaint alleges that Powell cut the tires and wires on the mower, and no other facts were provided to the court for this offense.

{¶9} R.C. 2929.28 permits the admission of "estimates or receipts indicating the cost of repairing or replacing property." There is no indication the statute requires the preparer of the estimate to be present or cross-examined.

{¶10} The victim proved by a preponderance of the evidence the amount of restitution sought. See R.C. 2929.28(A). Given the "broad standard" in the revised code section for determining the amount of restitution, the repair estimate was sufficient to establish an amount of restitution, and the trial court did not abuse its discretion in adjusting the estimate and ordering \$500 in restitution. See *State v. Meyers*, Butler App. No. CA2004-09-219, 2005-Ohio-4919, ¶15; see R.C. 2909.06. Powell's assignment of

error is overruled.

{¶11} Judgment affirmed.

HENDRICKSON and PIPER, JJ., concur.