[Cite as *State v. Penwell*, 2011-Ohio-2100.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-08-019
	:	O P I N I O N
- vs -		5/2/2011
	:	
BOBBY JOE PENWELL,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 10CRI00085

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HENDRICKSON, J.

{¶1} Defendant-appellant, Bobby Penwell, appeals the decision of the Fayette County Court of Common Pleas convicting him of receiving stolen property. We affirm the convictions.

{¶2} On April 12, 2010, Ronald Amore phoned the Fayette County Sheriff's Office to report a burglary at his residence. Sergeant Michael Stegall took a report from Amore, who indicated that a laptop and case he had purchased the previous year, and a small flat screen

television had been stolen from his home.

{¶3} On April 21, 2010, Sergeant Stegall received a call from Heather Gordon, who informed him that she had purchased a laptop from Penwell earlier that month for $125. Gordon informed the officer that she had become suspicious of the sale after she turned on the laptop and observed the username "Amore" appear on the screen, and the same name appear when she logged onto the Facebook website. Gordon also explained that she had called Penwell to inquire as to whether the laptop had been stolen, and that Penwell stated that the laptop belonged to his sister and he was selling it to pay a bill. However, Penwell was unable to explain why Amore's name appeared on the computer.

{¶4} Gordon also told Stegall that shortly after speaking to Penwell, she read a newspaper article reporting the Amore burglary, and it prompted her to contact police regarding her suspicions about the laptop. Gordon turned the laptop over to Stegall, who logged the item as evidence. After the investigation was completed, Stegall returned the laptop to Amore.

{¶5} Gordon also indicated to Stegall that she aided a coworker, Carol Thompson, in purchasing a flat screen television from Penwell, and that she loaned Thompson $60 to purchase the television. According to Thompson's trial testimony, she purchased the television from Penwell with Gordon's help, but threw it away after she discovered that it did not work properly. Because the television was never recovered, Amore purchased a similar television to replace the one stolen from his home.

{¶6} On May 21, 2010, Penwell was indicted on one count of receiving stolen property in violation of R.C. 2913.51(A), a fifth-degree felony. Penwell waived his right to a jury, and elected to have his case heard by the trial court. Following the bench trial, the trial court found Penwell guilty and sentenced him to six months in prison. Penwell now appeals the decision of the trial court, raising the following assignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED IN ADMITTING HEARSAY EVIDENCE FROM TWO OF THE STATE'S WITNESSES."

{¶9} Penwell argues in his first assignment of error that the trial court erred in permitting what he categorizes as inadmissible hearsay testimony from two witnesses, Sergeant Stegall and Ronald Amore.[1]

{¶10} A trial court's decision to admit or exclude evidence will not be reversed absent an abuse of discretion. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶122. An abuse of discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. Id. at ¶130. We also note for the benefit of this argument, and all of Penwell's subsequent arguments challenging evidentiary issues, "because this was a bench trial, it is presumed that the court will only consider admissible evidence." *State v. Pesec*, Portage App. No. 2006-P-0084, 2007-Ohio-3846, ¶27.

{¶11} According to Evid.R. 801(C), hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The hearsay rule provides that out-of-court statements are inadmissible at trial unless it falls under one of the exceptions to the rule. See Evid.R. 801-804.

{¶12} First, Penwell objects to testimony from Sergeant Stegall regarding his investigation into the burglary and stolen goods. Stegall testified that he had taken a statement from Gordon regarding the stolen items, and that the laptop discussed in the

1. Throughout his appellate brief, Penwell cites the Federal Rules of Evidence as well as federal case law to support his arguments. For the benefit of appellate counsel, we note that evidentiary matters in state court are generally governed by state rules, statutes, and case law. The present case does not require us to decide a federal question of any sort, nor does it require us to resort to federal law to fill in a void in Ohio law.

statement was later identified as being property listed in the prior burglary report. Stegall went on to testify that the laptop Gordon turned over to police was identified by Amore as the one taken from his home. Penwell objected to Stegall's testimony on hearsay grounds, and the trial court overruled the objection.

{¶13} The trial court did not err in overruling the objection. As the Ohio Supreme Court has stated, "it is well established that extrajudicial statements made by an out-of-court declarant are properly admissible to explain the actions of a witness to whom the statement was directed." *State v. Thomas* (1980), 61 Ohio St.2d 223, 232. "For example, where statements are offered to explain an officer's conduct while investigating a crime, such statements are not hearsay." *State v. Blevins* (1987), 36 Ohio App.3d 147,149.

{¶14} In his testimony, Stegall did not relay any out-of-court statements, but rather discussed why he had taken a report from Gordon, and that he entered the computer into evidence once it was identified by Amore. The testimony, therefore, is not inadmissible hearsay.

{¶15} Next, Penwell disputes the admission of testimony offered by Amore regarding statements made by his son on the day the burglary was reported. Amore testified that his son informed him that their cat had been in the house and knocked over the trash on the day in question, and that this information was significant because the family does not allow the cat in their home. When Penwell objected to the testimony as hearsay, the trial court overruled the objection. The trial court did not err in doing as such because the testimony was not offered to prove that the cat had, in fact, been in the home. Instead, it was being offered to prove Amore's state of mind, and that he was suspicious about the cat being in the home. Amore was not an out-of-court declarant, and as a witness in court, was open to cross-examination from Penwell regarding what effect the cat being in the home had on him.

{¶16} Finally, Penwell challenges Amore's testimony that Gordon came to his place of

employment and informed him that she had made a police report regarding the stolen laptop. When the prosecutor asked Amore if he had made a report based on Gordon's statement, he responded, "she said she already did. And I called the next morning, the Sheriff's Office and they said yeah that they had the computer and that they'd talked with her." When Penwell objected to the testimony, the trial court overruled the objection and stated that it was not "considering it for the truth of what she called the Sheriff for. Just why he did what he did." The trial court ruled properly, as Amore's testimony regarding Gordon's statement was meant to demonstrate why he had not filed a separate report to the Sheriff's Office, and why he called the next day to seek more information. As the testimony was not offered to prove the truth of the matter asserted, Amore's testimony was not hearsay.

{¶17} Having found that the testimony did not constitute inadmissible hearsay, Penwell's first assignment of error is overruled.

{¶18} Assignment of Error No. 2:

{¶19} "THE TRIAL COURT ERRED BY PERMITTING THE USE OF LEADING QUESTIONS ON DIRECT EXAMINATION OF ALL FOUR WITNESSES."

{¶20} Penwell contends that the trial court abused its discretion in permitting the state to utilize leading questions to examine four state witnesses, Stegall, Amore, Gordon, and Thompson. There is no merit to this argument.

{¶21} According to the Ohio Supreme Court, "a leading question is 'one that suggests to the witness the answer desired by the examiner.'" *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶149, citing 1 McCormick, Evidence (5th Ed.1999) 19, Section 6. According to Evid.R. 611(C), "leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony." The exception stated in the rule "is quite broad and places the limits upon the use of leading questions on direct examination within the sound judicial discretion of the trial court." *State v. Lewis*

(1982), 4 Ohio App.3d 275, 278.

{¶22} At the onset, we note that Penwell fails to identify the exact questions he claims are leading, and instead references general pages in the transcript. For the sake of argument, however, we will address the questions objected to during the bench trial that fall within the general page references within Penwell's brief.

{¶23} First, Penwell argues that the state used leading questions to elicit testimony from Sergeant Stegall regarding the stolen property report and later identification of the property. The state posed the following question to Stegall: "On [April 21, 2010] were you involved in a taking of a report regarding the property that had been stolen?" The prosecutor later asked, "was that, was any of that property later identified as being property from the prior burglary report?" Instead of phrasing the question as if to suggest to Stegall the answer the prosecutor hoped to elicit, the state was merely directing Stegall's attention to the topic on which it was inquiring. Because the question was not leading, the trial court properly overruled Penwell's objection. See *State v. D'Ambrosio* (1993), 67 Ohio St.3d 185, 191.

{¶24} Penwell next objects to the alleged use of leading questions to obtain testimony from Amore regarding the laptop stolen from his residence and photographs of the laptop that were admitted into evidence. However, Penwell fails to direct our attention to any specific questions from the transcript regarding these topics. Instead, Penwell argues in his brief that "leading questions were used to elicit testimont (sic) from Ron Amore Jr. regarding the laptop stolen from his property (tp 20) and the photos of a laptop computer that were admitted into evidence." However, the questions on page 20 of the transcript are specific to the value of the stolen television, as well as the price and brand of the stolen laptop. The only objection regarding leading questions made on page 20 was in response to the following exchange.

{¶25} "[STATE]: Had you looked at TV's like that before?

{¶26} "[AMORE]: Yes.

{¶27} "[STATE]: Is $300.00 around the price that you had seen them for?

{¶28} "[AMORE]: Yeah we bought another one and I believe it was actually around 320, 330 for that one.

{¶29} "[STATE]: Is it similar to the one that was taken?

{¶30} "[AMORE]: Yes it's very similar."

{¶31} At that point, Penwell objected. However, even if Penwell's challenge is directed at the state's question regarding the $300 value of the television, the question was a summary of previous testimony, and not otherwise leading. Only two questions before, the state asked Amore if he knew what the value of the TV was. Amore responded, "I'm guessing around $300 I'm not sure." After Penwell objected, the trial court stated, "Well he can guess so (sic) to whatever value that is." The state then asked, "had you looked at TV's like that before?" After Amore answered that he had, the state summarized Amore's previous testimony by asking, "Is $300.00 around the price you had seen them for?" This question, is therefore, not leading, as it was meant to summarize and clarify a previous response. See *State v. Howard*, Montgomery App. No. 20575, 2005-Ohio-3702.

{¶32} Penwell further asserts that leading questions were used to prompt testimony from Gordon regarding her purchase of a laptop and a conversation she had with him soon after the purchase. The state first asked Gordon, "did you purchase any property from Mr. Penwell back in April of this year?" However, this question is not leading because it merely directed Gordon's attention to the topic the state was inquiring of, mainly Gordon's purchase from Penwell in April, 2010. Penwell also asserts that the following exchange was leading:

{¶33} "[Q.]: Did you tell him about the name that showed up?

{¶34} "[A.]: Yes.

{¶35} "[Q.]: Did he have any explanation for that?"

{¶36} However, this exchange was not leading. In Gordon's testimony preceding this exchange, she stated that Amore's name appeared on the screen when the computer was turned on and "when I popped open Facebook that's when it popped up Ron Amore." The state's question regarding the name showing up was both a summary of the previous testimony, and a clarification of Gordon's testimony specific to her discussing the username issue when she asked Penwell if the computer was stolen. The state's question, "did he have any explanation for that?" is not leading because it did not suggest an answer, and actually allowed Gordon to explain what Penwell told her in response to her question regarding the username.

{¶37} Finally, Penwell opposes the alleged use of leading questions to elicit testimony from Thompson regarding whether or not she heard a conversation between Penwell and his sister during the sale of the television. During Penwell's cross-examination of Thompson, she stated that Penwell offered to sell her the television for $80, but that the most she would pay was $60. Thompson stated that Penwell called his sister to see if she would accept $60 instead of $80, and that after the phone call, he agreed to sell the television for $60. On re-examination, the state asked, "the phone call that [defense counsel] asked you about. Did you, you just heard, or did you hear the Defendant's side of that, Mr. Penwell's side of that phone call? Or did somebody tell you that he made a phone call?" When Thompson answered that she had seen Penwell on the phone, the state asked, "did you hear it or you just saw him on the phone?" These questions are not leading because the state was directing Thompson to answer a question specific to a topic discussed on cross-examination, and the questions did not otherwise suggest an answer. In fact, Thompson answered the question by stating that she had assumed Penwell was speaking to his sister, an answer not suggested by the question.

{¶38} Having found that the questions were not leading in nature, and that the trial

court did not abuse its discretion in overruling Penwell's objections, his second assignment of error is overruled.

{¶39} Assignment of Error No. 3:

{¶40} "THE TRIAL COURT ERRED ADMITTING IRRELEVANT TESTIMONIAL EVIDENCE OF TWO WITNESSES."

{¶41} Penwell maintains that the trial court erred in admitting irrelevant testimony from two state witnesses, Stegall and Amore.

{¶42} According to Evid.R. 401, "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "The issue of whether testimony or evidence is relevant or irrelevant * * * is best decided by the trial judge, who is in a significantly better position to analyze the impact of the evidence on the jury." *Renfro v. Black* (1990), 52 Ohio St.3d 27, 31. A trial court's decision to admit or exclude evidence will not be reversed absent an abuse of discretion. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶122.

{¶43} Specifically, Penwell argues that the state and the trial court improperly questioned Sergeant Stegall about his lack of knowledge regarding any mishandling of the laptop when it was secured as evidence. During cross-examination, Penwell asked Stegall if he could be sure that the same computer he took from Gordon was the one actually entered into evidence, and ultimately identified by Amore as his property. The trial court then asked a series of questions regarding the process of applying an identification tag to evidence. During re-direct, the following exchange occurred:

{¶44} "[STATE]: [Defense counsel] was asking you whether you would know whether that laptop is the one that you actually took. The tag that the Judge was questioning you about, was that actually attached to the laptop?

{¶45} "[STEGALL]: Yes

{¶46} "[STATE]: So that would be the same laptop that you took from Heather Gordon?

{¶47} "[STEGALL]: I copied down the serial number on that one, and I can't make it out on the photos on this one.

{¶48} "[STATE]: You don't have any reason to believe that somebody would have taken the evidence tag that you put on that laptop and put on another one?

{¶49} "[DEFENSE COUNSEL]: Objection what, whether somebody else would have done something else is irrelevant Your Honor.

{¶50} "[TRIAL COURT]: You don't have any information that anybody switched the computer?

{¶51} "[STEGALL]: No sir.

{¶52} "[DEFENSE COUNSEL]: I guess I'll object to that question as well."

{¶53} According to Penwell, any potential mishandling or mislabeling of the evidence was irrelevant, and the trial court and state should not have questioned Stegall about the issue. However, whether or not Stegall had information regarding the evidentiary chain, or if the computer he took from Gordon was the one entered into evidence, was relevant to Amore's ability to identify the property as that which was stolen from his house.

{¶54} In addition, Penwell argues that the court permitted the state to attempt to elicit irrelevant testimony from Amore regarding the regular retail price of the laptop. The regular price, he insists, is irrelevant because R.C. 2913.61 indicates that valuation of stolen property is to be measured by a new laptop of like kind and quality. Amore testified that he purchased the laptop at a sale price of $350. When the state questioned Amore about the regular price of the laptop, the trial court permitted him to respond to the question over defense counsel's objection. Amore could not recall how much the laptop cost when it was not on sale, and

therefore did not give any testimony as to the regular price. Therefore, the state's failed attempt to elicit testimony from Amore on the regular price of the computer did not result in the court hearing irrelevant testimony.

{¶55} Having found no abuse of discretion, Penwell's third assignment of error is overruled.

{¶56} Assignment of Error No. 4:

{¶57} "THE TRIAL COURT ERRED ADMITTING STATE'S EXHIBIT 1 WHEN NOT PROPERLY AUTHENTICATED AND IN VIOLATION OF THE BEST EVIDENCE RULE."

{¶58} Penwell argues that the trial court improperly admitted evidence that was not properly authenticated and that did not comport with the best evidence rule. This argument lacks merit.

{¶59} Although the wording of Penwell's assignment of error invokes the best evidence rule, the body of his brief fails to advance any arguments regarding the rule, or in any way suggest that the state submitted evidence that violated the rule. We therefore decline to make arguments in support of the issue on Penwell's behalf, as the burden to do so lies with an appellant. *State v. Arrowood*, Belmont App. No. 01 BA 05, 2001-Ohio-3285. Therefore, in accordance with the appellate rules, we decline to address whether the evidence in question was admitted in violation of the best evidence rule. See App.R. 12(A)(2); App.R. 16(A)(7).

{¶60} Regarding proper authentication, Evid.R. 901(A) states, "the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." To properly authenticate photographs, the proponent need only produce testimony from someone with knowledge to state that the photograph represents a fair and accurate depiction of the actual item at the time the picture was taken. *State v. Bettis*, Butler App. No.

CA2004-02-034, 2005-Ohio-2917. The admission of evidence, including photographic evidence, is left to the trial court's sound discretion. Id.

{¶61} According to Penwell, none of the state's witnesses could definitively verify that the laptop depicted in the photographs offered as the state's Exhibit 1 was the same laptop taken from Amore's residence. However, Stegall testified that the photographs entered into evidence fairly and accurately depicted the laptop in question. This testimony is sufficient to authenticate the photograph, as according to Evid.R. 901(B)(1), proper means of authentication include: "Testimony that a matter is what it is claimed to be." In addition to Stegall's testimony, Amore also identified the photograph as a depiction of his laptop, and noted that a piece of candy he placed in the computer bag before the theft was visible in the photograph. Gordon testified that she recognized the laptop in the photographs as the one she purchased from Penwell.

{¶62} The trial court did not abuse its discretion in finding that the photograph was properly authenticated because it was in the best position to determine the credibility of the witnesses who testified that the photograph was what it purported to be, mainly the laptop stolen from Amore's house, sold to Gordon, and eventually entered into police evidence. Having found the evidence properly admitted, Penwell's fourth assignment of error is overruled.

{¶63} Assignment of Error No. 5:

{¶64} "THE TRIAL COURT ERRED BY DENYING DEFENSE RULE 29 MOTION FOR ACQUITTAL WHEN THE PROSECUTION FAILED TO PROVE THE ELEMENTS OF THE OFFENSE BEYOND A REASONABLE DOUBT."

{¶65} Penwell challenges the denial of his Crim.R. 29 motion for acquittal on the basis that the state failed to prove beyond a reasonable doubt that he knew or reasonably should have known the items he sold in April 2010 were stolen. There is no merit to this argument.

{¶66} A Crim.R. 29(A) motion for acquittal is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37. The review of a claim that a conviction is not supported by sufficient evidence focuses upon whether, as a matter of law, the evidence presented at trial is legally sufficient to sustain a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. This test raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶34.

{¶67} The offense of receiving stolen property under R.C. 2913.51(A) requires proof that a person received, retained, or disposed of property belonging to another "knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense." If the value of the property involved is five hundred dollars or more but less than five thousand dollars, the offense is a fifth-degree felony. R.C. 2913.51(C).

{¶68} As stated, Penwell disputes the existence of sufficient evidence to prove that the knowledge element of the offense was satisfied beyond a reasonable doubt. According to R.C. 2901.22(B). "a person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶69} The state presented evidence that Amore reported a burglary at his home, and that the items taken from his home included a flat screen television and a laptop computer. Amore also testified that the computer had been purchased for $350 and that the cost to replace the television stolen from his house was between $320 to $330. Gordon testified that

Penwell approached her and offered to sell the laptop and television, and that he claimed the items belonged to his sister. Gordon also testified that when she turned on the computer, 'Amore' was displayed as the username, and that when she accessed Facebook, Amore's name also came up as the default username. The trial court also heard testimony that Thompson purchased the flat screen television from Penwell. After viewing the evidence in a light most favorable to the prosecution, we conclude that the trial court did not err in denying Penwell's Crim.R. 29 motion for acquittal because there was sufficient evidence to support the conviction for receiving stolen property. Penwell's fifth assignment of error is overruled.

{¶70} Assignment of Error No. 6:

{¶71} "THE TRIAL COURT ERRED BY ADMITTING AND ACCEPTING IMPROPER VALUATION OF THE PROPERTY INVOLVED."

{¶72} In his final assignment of error, Penwell argues that the trial court improperly accepted Amore's estimated valuation of the television and the sale price for the laptop. This argument lacks merit.

{¶73} Under R.C. 2913.61(D)(2), "the following criteria shall be used in determining the value of property or services involved in a theft offense: (2) The value of personal effects and household goods, *** is the cost of replacing the property with new property of like kind and quality." "[C]ircumstantial evidence, including photographs of personal property, may be used to prove the value of stolen items in a theft offense." *State v. Pesec*, Portage App. No. 2006-P-0084, 2007-Ohio-3846, ¶40.

{¶74} Penwell argues that the trial court "erred by using the guessed value provided by" Amore, so that the valuation of the property was improperly calculated. However, the state entered photographs of the laptop into evidence, and the trial court heard direct testimony regarding the value of the items. The trial court, therefore, did not err in accepting Amore's testimony as evidence of the property's replacement value. See *State v. Jones*,

Tuscarawas App. No. 2002-AP-05-0041, 2003-Ohio-445 (finding trial court properly admitted victim testimony regarding value of the stolen property); *State v. Allen*, Stark App. No. 2002CA00059, 2003-Ohio-229 (finding trial court properly permitted witnesses to testify to value of stolen items); and *In re Lame* (Sept. 25, 1998), Portage App. Nos. 96-P-0256, 66, and 67 (finding proper replacement value based on trial testimony from theft victims).

{¶75} Having found no abuse of discretion in the trial court's decision to admit Amore's valuation testimony, Penwell's final assignment of error is overruled.

{¶76} Judgment affirmed.

POWELL, P.J., concurs.

RINGLAND, J., concurs separately.

RINGLAND, J., concurring separately.

{¶77} I concur with the majority's analysis and resolution of appellant's six assignments of error. I write separately, however, to emphasize that appellant did not argue that the state failed to provide sufficient evidence to find him guilty of a higher degree theft offense based on the value of the property involved. See, e.g., *State v. Reese*, 165 Ohio St.3d 21, 2005-Ohio-7075, ¶24-36. As the majority explained in its discussion of his fifth and sixth assignments of error, and as relevant here, appellant merely argued that the trial court erred in its decision denying his Crim.R. 29 motion for acquittal by alleging the state failed to prove he knew or had reasonable cause to believe the items were stolen, and that the trial court erred by accepting Amore's testimony regarding the valuation of the items as evidence of their replacement value. As we have stated previously, this court will not "root out" arguments that can support an assignment of error, nor will this court "conjure up questions never squarely asked." *State v. Fields*, Brown App. No. CA2009-05-018, 2009-Ohio-6921,

¶7.

{¶78} I also write separately to highlight the difficult task the trial court was faced with in applying R.C. 2913.61(D)(2) to the case at bar. As the majority correctly notes, pursuant to R.C. 2913.61(D)(2), the value of personal effects and household goods involved in a theft offense "is the cost of replacing the property with new property of like kind and quality." In this case, however, while the Fayette County Sheriff's Office was unable to recover Amore's television, it did recover his laptop. Amore, therefore, was not required to replace the laptop with new property of like kind and quality.

{¶79} As evidenced by the 1973 Legislative Service Commission Comment, the General Assembly's goal in passing R.C. 2913.61 was to assist the victim and state in valuing property involved in a theft offense. However, when presented with these facts, the Ohio Legislature's goal is not achieved. Requiring the state to present evidence of the replacement value for property that was returned to its rightful owner, as the statutory language now requires, is unnecessarily burdensome and confusing to all parties involved. Regardless, until and unless the legislature amends R.C. 2913.61(D) to address these issues, courts should, nonetheless, strictly adhere to the statutory requirements in determining the value of property involved in a theft offense.

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