

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DOUGLAS TARANTO,

Defendant-Appellant.

UNPUBLISHED

March 25, 1997

No. 191371

Ingham Circuit Court

LC No. 94-068021-FH

Before: D.F. Walsh,* P.J., and R.P. Griffin** and W.P. Cynar,* JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to malicious destruction of property under \$100, MCL 750.377a; MSA 28.609(1), and was sentenced to two years' probation and ordered to pay a fine of \$100, costs of \$1,900, restitution to the victim of \$135 plus \$1,024.11 for the cost of repairing the damage to her car and \$720 for supervisory costs. Defendant was also ordered to have no further contact with the victim. Defendant now appeals as of right. We affirm in part, vacate in part, and remand. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant argues that the trial court erred in assessing costs and in calculating the amount of restitution to be paid. The prosecutor conceded that the trial court erred in this regard. We agree. In assessing costs to be taxed, the trial court failed to determine the actual costs of prosecution in this case. Hence, we remand the matter for the trial court to make such a determination. *People v Barber*, 14 Mich App 395; 165 NW2d 608 (1968). In addition, restitution can only be ordered for those losses that are easily ascertained and measured and are a direct result of defendant's criminal acts. *People v White*, 212 Mich App 298 536 NW2d 876 (1995). Pursuant to the plea agreement, defendant's criminal acts resulted in damage to the right side of the victim's car and restitution can only be ordered

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

**Former Supreme Court justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

for costs associated with repair of that portion of the victim's car. The trial court erred in ordering restitution for repair to all the damage to the victim's car. The award of costs and the award of restitution regarding damage to the car are vacated and the matter is remanded for determination of the costs of prosecution and the costs of repairs to the right side of the victim's car only.

Defendant also argues that his sentence is disproportionate because it exceeds the recommendation of the probation department. Defendant has waived this issue. *People v Ward*, 206 Mich App 38; 520 NW2d 363 (1994). Defendant's sentence, except for the costs and restitution amount, is affirmed.

Finally, defendant argues that the hearing on remand must be before a different judge. We disagree. Because the matters remanded do not allow for discretion and only require calculation of amounts due, the waste and duplication of assigning it to another judge would outweigh any benefit. *People v Evans*, 156 Mich App 68; 401 NW2d 312 (1986).

Affirmed in part, vacated in part and remanded for action in accordance with this opinion. We do not retain jurisdiction.

/s/ Daniel F. Walsh

/s/ Robert P. Griffin

/s/ Walter P. Cynar