

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINE ANN MULLEN,

Defendant-Appellant.

UNPUBLISHED

June 29, 2004

No. 244700

Ingham Circuit Court

LC No. 01-077566-FH

Before: Hoekstra, P.J., and O’Connell and Donofrio, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that defendant’s conviction should be affirmed. I write separately to state that the trial court’s restitution order should not be vacated. The trial court conducted an evidentiary hearing to determine if any restitution was due and the amount of that restitution. Defendant was given the opportunity to present evidence and to cross-examine witnesses. At the evidentiary hearing, expert witnesses were called, and the trial court determined that restitution was due in the amount of \$29,748. I would affirm the trial court’s decision.

I conclude that the trial court would not have ordered restitution if it believed that simply returning the computer servers was an adequate method of restitution. By proceeding with expert testimony to determine the value of the computer servers, the trial court tacitly indicated that simply returning the computer servers was an inadequate form of restitution. The reason for conducting the restitution hearing was to determine the amount of restitution, if any, that was due the victim in this case. Computer servers lose value rapidly. As the expert witness confirmed, a new generation computer is valued significantly higher than a computer that has decreased in value because of technological changes. In my opinion, the methodology used by the trial court to determine the difference in the value of the new servers and the value on their date of return is an adequate method to resolve the restitution issue. I would affirm the restitution decision of the trial court.

/s/ Peter D. O’Connell