

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

KENTREIA RUSSELL,

Appellant

v.

STATE OF FLORIDA,

Appellee.

No. 2D2024-1373

August 28, 2026

Appeal from the Circuit Court for Hillsborough County; Michelle Sisco, Judge.

Blair Allen, Public Defender, and Andrea M. Norgard, Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Wendy Buffington, Assistant Attorney General, Tampa, for Appellee.

GUARD, Judge.

Kentreia Russell appeals her judgment and sentences convicting her, collectively, of burglary of an unoccupied dwelling and grand theft. First, she argues that her motion for judgment of acquittal on her grand theft conviction was wrongfully denied. Second, she argues that an excess fee was incorrectly included in her sentence. We agree with her arguments on both and reverse and remand in accordance with this opinion.

I.

Jacob Dame arrived home after work to find two strange bicycles at his back gate. Perplexed, he entered his home and heard a commotion coming from his bedroom. Dame called 911. Tampa police officers responded and called for the burglars to come out. Russell and Jerrold Scott, her codefendant, exited. Russell carried a bag containing multiple items belonging to Dame. Those items included six wristwatches, two film cameras, an unopened kitchen knife set, and a men's hair trimmer. Jerrold Scott possessed three cell phones belonging to Dame. The State charged Russell with one count of burglary of an unoccupied dwelling, in violation of section 810.02(1)(b), Florida Statutes (2022), and one count of grand theft from a dwelling, in violation of section 812.014(2)(d), Florida Statutes (2022). The information alleged the property stolen was valued at \$100 or more, but less than \$750.

At trial, the State sought to introduce evidence of the value of the stolen items through testimony of Dame and photographs of the items. Dame first testified about one camera found in the bag Russell carried. Dame testified to (a) when he purchased the camera, (b) how much he paid for the camera, (c) his use of the camera, and (d) the condition of the camera versus when it was purchased. When the State asked Dame about his opinion of the fair market value of the camera, Russell's attorney objected, arguing that Dame lacked personal knowledge of the value and that the State had not laid the proper foundation to show that Dame had personal knowledge. After argument from the State that owners can testify about their opinion of fair market value, the trial court sustained the objection. In compliance with the trial court's ruling, the State continued with its presentation of the evidence for each item, asking about the original purchase price, when it was purchased, how it

was used, and its condition when it was stolen. After the State rested, the defense moved for a judgment of acquittal, arguing the State had not proven the value element of the grand theft charge. The court denied the motion. A jury convicted Russell of both charges.

On June 4, 2024, the trial court found Russell to be a prison releasee reoffender and originally sentenced Russell to a term of imprisonment of fifteen years followed by five years of probation.¹ Russell timely filed a notice of appeal. While this appeal was pending, Russell filed several motions to correct sentencing errors under Florida Rule of Criminal Procedure 3.800(b)(2). The trial court resentenced her to 87.9 months in this case.² And the trial court ordered that the "PD application fee" be reduced to \$50.00 on count one of the amended judgment and sentence.

II.

We review a trial court's denial of a motion for judgment of acquittal de novo and will affirm if the verdict is supported by competent substantial evidence. *Andrews v. State*, 390 So. 3d 221, 237 (Fla. 2d DCA 2024) (quoting *Berry v. State*, 306 So. 3d 1256, 1258 (Fla. 2d DCA 2020)). In reviewing a denial, we review both the facts in evidence and all reasonable inferences that a jury could fairly and reasonably infer from the evidence in favor of the State. *See id.*

¹ At sentencing, Russell renewed her motion for judgment of acquittal on her grand theft charge arguing the State failed to prove the value of the items. Russell also pled open to two other cases as part of that sentencing and admitted a violation of probation. The trial court ran Russell's fifteen-year sentence concurrent with a fifteen-year sentence arising out of another burglary and grand theft.

² In exchange for the 87.9-month sentence in this case, Russell agreed to dismiss her motion to correct sentence challenge in a different case where she was serving a fifteen-year concurrent sentence.

Based on the information, the State must prove that the property Russell stole from Dame's house was valued at \$100 or more, but less than \$750. § 812.014(2)(d). The word "value" is defined for theft, robbery, and related crimes in section 812.012(10), Fla. Stat. (2022). As is relevant, "value" is defined as:

(a)1. Value means the market value of the property at the time and place of the offense or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

. . . .

(b) If the value of property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than \$100.

(c) Amounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or from several persons, may be aggregated in determining the grade of the offense.

§ 812.012(10).

The Florida Supreme Court stated long ago, "[p]roof of the element of value is essential" to convict someone for grand theft. *Negron v. State*, 306 So. 2d 104, 108 (Fla. 1974), *receded from on other grounds in Butterworth v. Fluellen*, 389 So. 2d 968 (Fla. 1980). In *Negron*, the supreme court announced four factors that are to be considered in ascertaining "market value" under the then existing larceny statute. See *id.* The four factors are (1) an item's original cost, (2) the manner of use for the item, (3) an item's condition and quality, and (4) the item's depreciation. See *id.*

Proving "market value" using the *Negron* factors has been a surprisingly difficult exercise as we have repeatedly reversed convictions for failing to offer sufficient proof of these four elements. See, e.g., *Teltschik v. State*, 257 So. 3d 610, 612 (Fla. 2d DCA 2018); *D.D. v. State*, 253 So. 3d 121, 123-24 (Fla. 2d DCA 2018); *D.J.S. v. State*, 242 So. 3d 448, 449 (Fla. 2d DCA 2018); *Ciani v. State*, 177 So. 3d 656, 658 (Fla. 2d DCA 2015); *Wiechert v. State*, 170 So. 3d 109, 111-12 (Fla. 2d DCA 2015); *Newland v. State*, 117 So. 3d 482, 483-84 (Fla. 2d DCA 2013); *Carter v. State*, 77 So. 3d 849, 851-52 (Fla. 2d DCA 2012); *S.A.S. v. State*, 970 So. 2d 483, 483 (Fla. 2d DCA 2007); *C.G.H. v. State*, 968 So. 2d 94, 95 (Fla. 2d DCA 2007); *Jones v. State*, 958 So. 2d 585, 586 (Fla. 2d DCA 2007); *Mitchell v. State*, 917 So. 2d 1056, 1057 (Fla. 2d DCA 2006); *D.H. v. State*, 864 So. 2d 588, 589 (Fla. 2d DCA 2004); *Pickett v. State*, 839 So. 2d 860, 862 (Fla. 2d DCA 2003); *Toler v. State*, 779 So. 2d 594, 595 (Fla. 2d DCA 2001).

Our experience with the difficulties of proving "market value" is not unique as our sister district courts have had a similar experience reversing convictions for theft-related charges. See, e.g., *Pennington v. State*, 397 So. 3d 1055, 1055 (Fla. 4th DCA 2024) (per curiam); *Devenish v. State*, 316 So. 3d 437, 438 (Fla. 1st DCA 2021) (per curiam); *Gallion v. State*, 312 So. 3d 983, 984 (Fla. 1st DCA 2020); *Freixa v. State*, 290 So. 3d 555, 557 (Fla. 3d DCA 2019); *Bruce v. State*, 276 So. 3d 1, 4 (Fla. 4th DCA 2019); *Gonzalez v. State*, 275 So. 3d 766, 768-69 (Fla. 3d DCA 2019); *Carter v. State*, 238 So. 3d 362, 364 (Fla. 1st DCA 2017); *Sirmons v. State*, 219 So. 3d 87, 88-89 (Fla. 4th DCA 2017); *Chambers v. State*, 200 So. 3d 242, 245-46 (Fla. 1st DCA 2016); *Tindal v. State*, 145 So. 3d 915, 920-21 (Fla. 4th DCA 2014); *Walker v. State*, 191 So. 3d 949, 950 (Fla. 4th DCA 2016); *Contes v. State*, 190 So. 3d 198, 199 (Fla. 3d DCA 2016); *E.G. v. State*, 180

So. 3d 1152, 1153 (Fla. 4th DCA 2015) (per curiam); *C.G. v. State*, 123 So. 3d 680, 682 (Fla. 5th DCA 2013); *A.D. v. State*, 30 So. 3d 676, 677-78 (Fla. 3d DCA 2010); *Lucky v. State*, 25 So. 3d 691, 692 (Fla. 4th DCA 2010).

While no two cases are identical, there are some common themes from many of these cases. First, there is difficulty offering proof in many cases related to depreciation, especially when electronics are involved. *See, e.g., Devenish*, 316 So. 3d at 438 (holding evidence without amount of depreciation in value insufficient); *Tindal*, 145 So. 3d at 920 (finding testimony insufficient regarding stolen laptop that was purchased two years prior for \$1,800 to \$2,200 because there was no testimony regarding depreciated value); *Lucky*, 25 So. 2d at 692 (stating "accelerated obsolescence" for electronics makes purchase price alone insufficient to establish market value); *C.G.H.*, 968 So. 2d at 95 (concluding that purchase price of a camera a year earlier is insufficient). Second, when victims resort to common sources for value for used items, e.g., websites that sell used electronics like eBay, courts have excluded that testimony as hearsay. *See, e.g., Gonzalez*, 275 So. 3d at 768 (excluding owner's testimony regarding value of purse based on eBay listings); *D.J.S.*, 242 So. 3d at 449 (involving eBay listings).

The sheer volume of reversals is indicative that, while well intentioned, the *Negron* factors announced more than fifty years ago may no longer be well suited for the property now typically stolen. Consumer electronics appear to be one of the most targeted items by thieves but suffer from "accelerated obsolescence." *See, e.g., Lucky*, 25 So. 2d at 692. In theory, "[i]t is not necessary to adduce expert witnesses to testify as to the market value of goods at the time of the theft," and the State can simply ask the witness what his opinion is as to the market value of the goods. *Vickers v. State*, 303 So. 2d 700, 700-01 (Fla. 1st DCA 1974). But

obtaining admissible testimony regarding the depreciation of electronics appears to be near impossible, absent expert testimony, if a lay person cannot obtain information from websites because of hearsay concerns or, conversely, cannot offer their own assessment because of speculation concerns. The Florida Supreme Court should reconsider *Negron* considering these difficulties. That said, we are bound to apply *Negron*. See *Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973) ("[A] District Court of Appeal does not have the authority to overrule a decision of the Supreme Court of Florida.").³

Turning to this case, Dame testified to the items' purchase prices, the purchase timeframes, their uses, and their condition when stolen. But there was no testimony about the percentage of depreciation or fair market value of the items.⁴ Without testimony regarding the fourth *Negron* factor, the evidence is legally insufficient to sustain a conviction for grand theft. The proper remedy is for us to remand for entry of a judgment and

³ Alternatively, given the limited nature of the Florida Supreme Court's jurisdiction, it may be time for the legislature to revisit how it has defined "value" in section 812.012(10). For example, the legislature could make value either market value or replacement value by simply striking "if such cannot be satisfactorily ascertained," from section 812.012(10)(a), and likely resolve many of the issues detailed above. This court and others have held that the proposed stricken language restricts a trial court's ability to use replacement value to only where it is proven impossible to prove market value. See *Gonzalez*, 275 So. 3d at 770; *Teltschik*, 257 So. 3d at 612; *E.G.*, 180 So. 3d at 1153; *A.D.*, 30 So. 3d at 678-79. Practically, restricting replacement value to times when market value is proven to be impossible has meant that the State rarely offers evidence regarding replacement value.

⁴ Notably, the lack of evidence appears to be the direct result of an erroneous ruling by the trial court preventing the owner from testifying to this exact information. But the State did not raise this issue, so it is not before the court in this appeal.

sentence on count two for petit theft. *See Chappell v. State*, 200 So. 3d 159, 160-61 (Fla. 5th DCA 2016) (reversing the judgment and sentence for the third-degree grand theft with instructions for the trial court to enter judgment and sentence on this count for second-degree petit theft).

As to Russell's second issue, the supplemental record does not reflect whether the trial court entered an order reflecting the amended sentence after the trial court's January 8, 2026 order, relating to the public defender application fee. Given the January 8, 2026 order and the State's concession below, we reverse on that issue as well.

Therefore, we reverse the judgment and sentences as to count two only and instruct the trial court to enter an amended judgment finding Russell guilty of second-degree petit theft on count two, resentence Russell on count two, and, to the extent it has not already done so in an order, to reduce the public defender application fee to \$50 from \$100 in the previous judgment.

Affirmed in part, reversed in part, and remanded.

LUCAS, C.J., and VILLANTI, J., Concur.

Opinion subject to revision prior to official publication.