

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JOCELYNE AGIMUK,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12306
Trial Court No. 4BE-14-657 CR

MEMORANDUM OPINION

No. 6576 — January 17, 2018

Appeal from the District Court, Fourth Judicial District, Bethel,
Bruce Ward, Magistrate Judge.

Appearances: Jason A. Weiner, Gazewood & Weiner,
Fairbanks, for the Appellant. Eric A. Ringsmuth, Assistant
Attorney General, Office of Criminal Appeals, Anchorage, and
Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge MANNHEIMER.

This appeal concerns the propriety of a restitution award. For the reasons explained in this opinion, we affirm the restitution award.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

In late July 2014, in Bethel, Clara Tunuchuk purchased a 2003 Buick Century from a friend of her mother. The friend was preparing to leave Bethel and was willing to sell the vehicle for \$3000. This price was substantially below the market value of the vehicle as listed in the Kelley Blue Book. According to the Kelley Blue Book, a 2003 Buick Century in the Bethel market was worth between \$5374 (in excellent condition) and \$4554 (in fair condition).

A few weeks later, the defendant in this case, Jocelyne Agimuk, stole Tunuchuk's Buick. The vehicle was eventually located in a ditch, and it had suffered substantial damage while it was in Agimuk's possession.

One of the side-view mirrors was broken off, the front fender was damaged, there was a dent in the passenger door, and there were scratches along the driver's side, from the front fender all the way to the rear of the car. The passenger door was not operating correctly, and the car windows would sometimes malfunction.

Tunuchuk took the vehicle to a local body shop, and she received a repair estimate of \$4,319.41.

In the meantime, Agimuk was charged with first-degree vehicle theft, second-degree theft (*i.e.*, theft of an access device that was within the car), and fourth-degree criminal mischief. These charges were resolved by a plea bargain: Agimuk pleaded guilty to attempted first-degree vehicle theft, and the other charges were dismissed.

In connection with Agimuk's sentencing, the district court held a restitution hearing. The State (on behalf of the victim, Tunuchuk) asked the court to impose restitution in the amount of \$4,319.41 — *i.e.*, the repair estimate that Tunuchuk had received from the body shop.

Agimuk’s attorney argued that, since Tunuchuk had purchased the vehicle for only \$3000, Agimuk should not be ordered to pay restitution in an amount larger than \$3000.

The district court recognized the principle that the restitution award should not materially exceed the fair market value of the Buick.¹ But the district court noted that, according to the Kelley Blue Book, the market value of the Buick (even in “fair” condition) was substantially higher than Tunuchuk’s purchase price — and that the market value of the Buick was likewise higher than the repair estimate of \$4,319.41. The district court therefore ordered Agimuk to pay restitution in the amount of \$4,319.41.

On appeal, Agimuk renews her argument that she should not have to pay restitution in an amount higher than Tunuchuk’s purchase price (\$3000). We disagree. It was reasonable for the district court to assess the damage to Tunuchuk’s vehicle by calculating the reasonable cost of restoring it.² The district court was willing to limit Agimuk’s restitution to the fair market value of the vehicle before Agimuk stole it. But as we have explained, the Kelley Blue Book’s valuation of the Buick (even at the low end of the range) exceeded the amount of restitution that the State was seeking.

The Alaska Supreme Court has recognized that judges may consult the Kelley Blue Book as a reasonable method for ascertaining the fair market value of a used motor vehicle.³ And the fact that Tunuchuk may have purchased the car at a bargain price does not limit her ability to seek restitution.

¹ See *Willett v. State*, 826 P.2d 1142, 1145 (Alaska App. 1992).

² See *Chung v. Rora Park*, 339 P.3d 351, 353 (Alaska 2014); *Willett v. State*, 826 P.2d 1142, 1143 (Alaska App. 1992).

³ See *Ethelbah v. Walker*, 225 P.3d 1082, 1093 (Alaska 2009).

As an alternative argument, Agimuk contends that Tunuchuk may be unfairly enriched by the restitution award. Agimuk suggests that this may happen if Agimuk pays the restitution award in full, but then Tunuchuk decides not to have the body shop make all the repairs included in the estimate. But Agimuk provides no legal authority to support her assertion that this would be improper. We therefore conclude that this alternative argument is waived for inadequate briefing.⁴

For these reasons, the judgement of the district court is AFFIRMED.

⁴ *Petersen v. Mutual Life Ins. Co. of N.Y.*, 803 P.2d 406, 410 (Alaska 1990) (“Where a point is not given more than a cursory statement in the argument portion of a brief, the point will not be considered on appeal.”); *Hinson v. State*, 377 P.3d 981, 983 n. 1 (Alaska App. 2016).