



jewelry and Hirst took out a box behind a counter and let Ruiz look. Ruiz and Bradford walked away, then asked Hirst to show them a doll downstairs. Hirst told police she thought Bradford and Ruiz distracted her while Oppelt took the gold chains that Hirst then noticed were missing. Hirst said that Bradford and Ruiz came back into the store about the same time the police arrived. Ruiz was acting very nervous with the police officer, and when Ruiz was asked if his vehicle could be searched, he said "Fuck that – not without a search warrant." Ruiz refused permission to search his vehicle even when the officer pointed out to him he was on felony probation in Washington for burglary, and as such, the officer had the right to search his vehicle. The officer then called Ruiz' probation officer, who instructed the Coeur d'Alene Police officer to take Ruiz into custody for a probation violation because he had travelled outside the State of Washington.

When Oppelt, Ruiz and Bradford were searched, there were no items of jewelry found on their persons. Several items of jewelry were found in Ruiz' car. Many items of jewelry from all three stores were not located.

On May 5, 2008, defendant Robert Melvin Ruiz (Ruiz) was sentenced as follows:

BURGLARY, (a felony), Idaho Code § I. C. 18-1401, 18-204, committed on February 16, 2008 – to the custody of the Idaho State Board of Correction for a fixed term of TWO AND ONE HALF YEARS (2.5) years followed by an indeterminate term of SEVEN AND ONE HALF (7.5) years, for a total term not to exceed TEN (10) years. THIS SENTENCE RUNS CONCURRENT WITH THE SENTENCE IMPOSED IN STATE OF WASHINGTON CASE: SPOKANE COUNTY CASE NO. 00-1-01074-6.

This Court recommended Ruiz complete the Therapeutic Community in the State of Idaho prison system. The sentence and imposition of sentence was due to Ruiz' extensive criminal record, which consisted of a variety of crimes extending over twenty years, beginning in 1987, but most notably a theft in 1988, felony trafficking in stolen property in 1989, felony theft in 1989, probation violation and theft in 1992, attempted

McCray; and for Antique Corner, Sandra Velez; and listed \$3,894.00 for Lake City Antique Mall, Michelle Albert. Due to a winter storm, Ruiz' counsel made another motion to continue the restitution hearing, which was granted, and the restitution hearing was rescheduled for February 11, 2009. On February 11, 2009, Gerry McCrea, Michelle Albert testified on behalf of their businesses, and Nancy Hirst testified on behalf of Lake City Antique Mall. No testimony was heard from Sandra Velez, accordingly, the restitution hearing was continued for further evidence to April 29, 2009. At that hearing, counsel for Bradford and the State agreed that all the evidence had been presented regarding Bradford (against whom restitution is sought only for the Lake City Antique Mall). At that hearing, Sandra Velez testified on behalf of her business.

## II. ANALYSIS.

At the April 29, 2009, hearing, counsel for Ruiz raised several objections, each of which will be addressed.

Ruiz' counsel first argued that this Court's jurisdiction had expired, as this Court had left the issue of restitution open only for sixty days. Ruiz' counsel cited *State v. Ferguson*, 138 Idaho 659, 67 P.3d 1271 (Ct.App. 2002), for support of that argument. *Ferguson* provides no such support. *Ferguson* concerned a court order as part of Ferguson's probation terms and conditions, to pay restitution in an amount "TBD" (to be determined). The amount was never determined, and three years later, when Ferguson's probation had ended and the court ordered he had been discharged from probation finding he had satisfactorily complied with all the terms and conditions of his probation. 138 Idaho 659, 660, 67 P.3d 1271, 1272. Two years *after* that discharge, a restitution order was sought and granted by the court. 138 Idaho 659, 660-61, 67 P.3d 1271, 1272-73. The following quote from *Ferguson* shows that case completely obviates Ruiz'

argument:

The State's reliance upon I.C. § 19-5304(6), which provides that a court may enter the restitution order at the time of sentencing or "at such later date as deemed necessary by the court," is misplaced. The key word in this section of the statute is "necessary." This section contemplates that the court may need to grant the prosecution a *reasonable* amount of time *necessary* to gather information so as to locate all victims and correctly compute the amount of restitution. It does not, however, vest the court with the power to extend the entry of the order of restitution beyond the closing of the case and the discharge of the defendant. Any other reading of this statute places an unfair burden upon defendants.

138 Idaho 659, 662, 67 P.3d 1271, 1274. From a legal standpoint, Ruiz' argument is not well taken. From a factual standpoint, it must be kept in mind that *every* continuance in this matter was due to Ruiz.

Next Ruiz' counsel also argues that Ruiz only pled guilty to the charge in the information that alleged burglary of Lake City Antique Mall, and that *State v. Gardiner*, 127 Idaho 156, 898 P.2d 615 (Ct.App. 1995) says it has to be in the information.

Presumably, Ruiz is relying on the following portion of *Gardiner*:

We note, however, the specificity with which the legislature has defined "victim." According to the statute, one entitled to restitution must either be 1) a person or entity named in the complaint, information or indictment who suffers economic loss or injury as a result of the defendant's actions; 2) the immediate family of a minor; 3) the immediate family of the actual victim in homicide cases; or 4) a health care provider who has provided medical treatment to a victim.

127 Idaho 156, 165, 898 P.2d 615, 624. Given the language of the Idaho Court of Appeals, that in order to get restitution the victim must be "a person or entity named in the complaint, information or indictment", Ruiz is correct. Since only Lake City Antique Mall (Michelle Albert) is listed in the Information in his case, Antique Corner (Gerry and Mary Ann McCray) and Antique Corner (Sandra Velez), would not be entitled to restitution.

However, Ruiz' fails to realize that *Gardiner* interpreted Idaho Code § 19-5304 as it existed back in 1995, when that case was decided. As can be seen by a simple reading of *Gardiner*,

I.C. § 19-5304(1) defines "victim" as follows:

(e) "Victim" shall mean a person or entity, named in the complaint, information or indictment, who suffers economic loss or injury as the result of the defendant's criminal conduct and shall also include the immediate family of a minor and the immediate family of the actual victim in homicide cases. Victim shall also mean any health care provider who has provided medical treatment to a victim if such treatment is for an injury resulting from the defendant's criminal conduct, and who has not been otherwise compensated for such treatment by the injured victim.

127 Idaho 156, 164-65, 898 P.2d 615, 623-24. Idaho Code § 19-5304 was amended in 1999, and *now* reads:

(e) "Victim" shall mean:

(i) The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct..."

Idaho Code § 19-5304(e)(i). Under that statutory language, there is no requirement that a victim be named in complaint, information or indictment. Given the current language of the statute which expressly deletes the requirement that a victim be named in the complaint, information or indictment, that portion of *Gardiner* is of no precedence. Given the current language of the statute, which simply requires a victim be: "The directly injured victim which means a person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct...", Antique Corner (Gerry and Mary Ann McCray) and Antique Corner (Sandra Velez), are both entitled to restitution. All the jewelry that was recovered was found in Ruiz' trunk. All three, Ruiz, Bradford and Oppelt were acting in concert. Ruiz himself proves that in his presentence report, where Ruiz wrote:

We went into the Lake City Antique to look around on the way to the casino we ask to look at some rings the woman showed us 3 or 4 trays of rings at this time I took some and put them in my pocket

Ruiz PSI, p. 2. There is really no valid reason to not hold Ruiz accountable for the jewelry that proven to be taken from the three victims, but was never found.

Finally, Ruiz' counsel argued there was no testimony by a preponderance of the evidence by the victims as to the value of the property stolen. This Court finds all three victims who testified to be credible. All three prepared lists (or had an employee prepare a list) of the items that were determined missing from their respective stores. The lists were with estimated retail prices of the value of the item as it sat in their stores. Ruiz' counsel took exception to the fact that none of the victims could state with certainty when they came into possession of each of many items of jewelry that were taken, took exception with the fact that some of the items were on consignment from the true owner, and took exception with how these three victims arrived at a retail value of the items stolen. All three victims are in the business. All three victims are in the best position to know the value of the items taken. Albert testified that after the original list which was submitted to the prosecutor, she found some of the missing items on that list in a buffet behind some dishes. The fact that she then subtracted those items off her list only enhances her credibility. The reason they were found hidden away is most likely due to the actions of these three defendants either as law enforcement arrived, or as a place to stash the items for retrieval by the defendants at a later date. Had Ruiz wished for a detailed product description with exact current retail prices, he should have burglarized Wal-Mart. Ruiz, Bradford and Oppelt chose to burglarize three antique stores. Ruiz, Bradford and Oppelt chose to victimize these three individuals. Ruiz cannot be heard to now complain that these three owners of antique stores did not have state of the art inventory systems.

Idaho Code § 19-5304(6) requires:

Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

When property is stolen, it is the market value of the stolen property at the time and place of the crime. *State v. Bybee*, 115 Idaho 541, 544, 768 P.2d 804, 807 (Ct.App. 1989); *State v. Smith*, 144 Idaho 687, 693, 169 P.3d 275, 281 (Ct.App. 2007). While Ruiz will obviously be in prison for some amount of time, the immediate inability to pay restitution does not, in and of itself, bar the court from ordering restitution. *Id.*, *Bybee*, 115 Idaho 541, 544, 768 P.2d 804, 807. Nothing in Ruiz' presentence report indicates he should have any problem finding legitimate work once released from prison. Ruiz himself listed his physical health as "good" and has worked in the past. Ruiz PSI, pp. 9-10. The testimony and exhibits presented to the Court establish the amounts requested by the victims, by a preponderance of the evidence.

### III. CONCLUSION AND ORDER.

IT IS HEREBY ORDERED that Robert Melvin Ruiz pay restitution in the amounts as follows:

Antique Corner (Gerry and Mary Ann McCray), 1104 N. 4<sup>th</sup> St., Coeur d'Alene, ID 83814, in the amount of \$2,450.00;

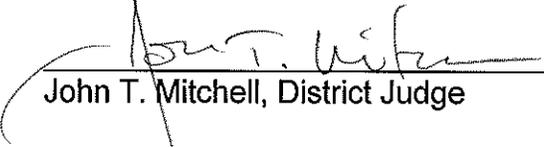
Antique Corner (Sandra Velez), 1104 N. 4<sup>th</sup> St. Coeur d'Alene, ID 83814, in the amount of \$1,420.00;

Lake City Antique Mall (Michelle Albert) 414 E. Sherman Ave., Coeur d'Alene, ID 83814, in the amount of \$3,894.00. Only this amount to Lake City Antique Mall (Michelle Albert), is joint and several with Lawrence Bradford.

IT IS FURTHER ORDERED that Lawrence Bradford pay restitution in the amount as follows:

Lake City Antique Mall (Michelle Albert) 414 E. Sherman Ave., Coeur d'Alene, ID 83814, in the amount of \$3,894.00. This is joint and several with Robert Marvin Ruiz.

DATED this 22nd day of May, 2009.

  
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John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the 29 day of May, 2009 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Defense Attorney - Christopher D. Schwartz  
Prosecuting Attorney - Ann-Wick 446-1833  
Donna Gardener

ROBERT MELVIN RUIZ AKA ROBERT M.  
MATHIAS  
IDOC # 48891

Antique Corner (Gerry and Mary Ann McCray)  
1104 N. 4<sup>th</sup> St.  
Coeur d'Alene, ID 83814

Antique Corner (Sandra Velez)  
1104 N. 4<sup>th</sup> St.  
Coeur d'Alene, ID 83814

Lake City Antique Mall (Michelle Albert)  
414 E. Sherman Ave.  
Coeur d'Alene, ID 83814

Idaho Department of Correction  
Records Division (certified copy)  
Fax: (208) 327-7445 ✓

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY

BY:  Deputy