

¶1 After a jury trial, Randy Lainhart was convicted of unlawful use of a means of transportation and criminal damage in the amount of \$10,000 or more. The trial court suspended the imposition of sentence, placed Lainhart on four year's supervised probation, and ordered him to serve sixty days in jail as a condition of probation. The court also ordered Lainhart to pay restitution to the victim in the amount of \$12,952. On appeal, Lainhart contends there was insufficient evidence to support his conviction for criminal damage and the court erred in admitting irrelevant evidence at the restitution hearing and in awarding restitution when the state failed to prove the victim had sustained an "actual" loss. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 On appeal, we view the facts in the light most favorable to sustaining the convictions and the trial court's restitution order. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008) (convictions); *State v. Lewis*, 222 Ariz. 321, ¶ 2, 214 P.3d 409, 411 (App. 2009) (restitution order). In March 2008, Lainhart borrowed a 1991 Fleetwood Southwind recreational vehicle (RV) from his employer Jeffrey Hughes to use as a temporary place to live with his girlfriend and her children. Aside from minor issues, the RV was in "good shape," clean, and functional.

¶3 In July 2008, when Lainhart failed to return the RV at the end of six weeks, the agreed-upon time period, Hughes reported the RV stolen after several unsuccessful attempts to reach Lainhart. Five days later, the police recovered the RV, unlocked and unoccupied, in the parking lot of a hotel. On the dashboard of the RV, officers found a handwritten note from Lainhart that read:

Jeff, Your RV not being in the same condition as when I first borrowed it, is very embarrassing and is why I couldn't show my face at work. I am very sorry for this and of course, keep my last paycheck towards the needed repairs, the cleaning and refilling of fuels [and] foods. I've attached a list. Thanks again for letting me use it. I really wish that I would have made time to make the repairs and clean, myself. . . . If my check is not enough for everything, send word and I'll try to send more money. . . . Sorry. Randy. 7/14/08

The attached "RV Return list" included the following items: "staighnten [sic] or replace awning arm, repair or replace screen door, repair or replace bedroom door, fill gas [and] propane tanks, stock shelves [sic] with food, etc., replace VCR, repair or cover apolstry [sic], shampoo carpet, clean dishes."

¶4 Hughes discovered that the RV was filled with trash, the upholstery was torn, the bedroom door was shredded, there were holes in the ceiling, the windshield and awning were broken, various items of equipment were damaged, and there were maggots in the refrigerator and mice inside the RV. The fuel line also was damaged and the brakes no longer functioned properly. Hughes obtained two estimates, one to repair and the other to clean the RV. The estimate to repair the mechanical problems and replace parts and electronics totaled \$11,511.92, and the estimate to clean, fumigate, and sanitize the RV was in the sum of \$1,207.68. Because Hughes could not afford to pay the repair costs, the RV remained at the repair shop for approximately six months. Hughes ultimately transferred title to the RV to the repair shop to cover the accrued storage fees.

¶5 Lainhart was charged with one count of theft of a means of transportation and one count of criminal damage of \$10,000 or more. During trial, defense counsel filed a motion to preclude admission of the cleaning and repair estimates, arguing, among

other things, that the actual cost to repair or replace, not estimates, was the proper measure of damages on the criminal damage charge. The trial court denied the motion and admitted both estimates into evidence at trial on the condition that the state provide an appropriate evidentiary foundation for each.

¶6 At the close of the state's case, and again at the close of evidence, Lainhart moved for a judgment of acquittal on the criminal damage count pursuant to Rule 20, Ariz. R. Crim. P. He argued that the state had not presented sufficient evidence establishing he had acted with the requisite mental state of recklessness and that it also had failed to prove damages. The trial court denied the motions.

¶7 The jury acquitted Lainhart of the theft charge but found him guilty of the lesser-included offense of unlawful use of a means of transportation and of criminal damage in the amount of \$10,000 or more. At the restitution hearing, the state introduced a report Hughes had obtained from the National Automobile Dealers Association (NADA), which stated that as of August 2009, the average retail price for an RV of the same make and model, though one year newer, was \$11,352. Over Lainhart's objection on foundational grounds, the trial court admitted the report and ordered Lainhart to pay restitution to Hughes in the total amount of \$12,952. The court determined the restitution amount by adding the average retail price of \$11,352 from the NADA report and \$1,600 for new tires Hughes had installed just before lending the RV to Lainhart. This timely appeal followed.

Discussion

I. Sufficiency of Evidence

¶8 Lainhart argues the trial court erred in denying his Rule 20 motion, claiming there was insufficient evidence of the requisite mental state and the state failed to establish the amount of actual damages the victim sustained. We review a trial court’s denial of a motion for judgment of acquittal for an abuse of discretion. *State v. Latham*, 223 Ariz. 70, ¶ 9, 219 P.3d 280, 282 (App. 2009).

¶9 A judgment of acquittal is appropriate only when “there is no substantial evidence to warrant a conviction.” Ariz. R. Crim. P. 20(a). Substantial evidence is such proof that “reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990), quoting *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). When reasonable minds could differ as to the inferences that may be drawn from the evidence, the evidence is substantial, and the case must be submitted to the jury. *State v. Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d 456, 477 (2004).¹

¹Although the parties agree, and we have often stated, that “we review the [trial] court’s denial of a Rule 20 motion for an abuse of discretion,” *State v. Leyvas*, 221 Ariz. 181, ¶ 33, 211 P.3d 1165, 1175 (App. 2009); see also *State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007), we note that in *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993), our supreme court stated that “we conduct a de novo review of the trial court’s decision [on a Rule 20 motion].” “To the extent it is unclear which standard applies, we need not resolve that question because we would reach the same conclusion under either standard of review.” *State v. West*, 224 Ariz. 575, n.3, 233 P.3d 1154, 1156 n.3 (App. 2010).

¶10 To support a conviction for criminal damage, the state was required to prove that Lainhart had recklessly “defac[ed] or damag[ed] the property of another person.” A.R.S. § 13-1602(A)(1). A person acts “recklessly” when

[the] person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

A.R.S. § 13-105(10)(c).

A. Defendant’s Mental State

¶11 Lainhart claims there was no evidence “as to what [his state] of mind was when the damage to the [RV] occurred.” He concedes his knowledge “that there was damage to the [RV] is apparent from the notes he left behind,” but he asserts that “the jury received no other evidence of what his state of mind might have been when the damage occurred.” A defendant’s state of mind can be shown by circumstantial evidence, and the defendant’s conduct is evidence of his state of mind. *State v. Bearup*, 221 Ariz. 163, ¶ 16, 211 P.3d 684, 688 (2009); *see also State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993) (“Arizona law makes no distinction between circumstantial and direct evidence.”).

¶12 Here the jury was presented with ample evidence of the damage done to the RV while it was in Lainhart’s possession: the bedroom door looked as though “somebody had shredded it with a chain saw,” the upholstery was torn, and the ceiling had holes in it; the refrigerator and the sink were full of maggots, “still growing” from the

food Lainhart had left behind; the RV's fuel line contained ping-pong balls and children's toys; and the electronics, such as the digital video display (DVD) player and television, had been "tor[n] apart." Given the nature, extent, and type of the damage to the RV, and Lainhart's concession of financial responsibility for that damage in his note to Hughes, the jury reasonably could infer that, at a minimum, Lainhart possessed the culpable mental state of recklessness required to find him guilty of criminal damage.

¶13 To the extent Lainhart asserts it was unclear from the evidence specifically which damage he had caused, because his girlfriend and her children also were occupying the RV, we find no merit to this claim. Lainhart does not challenge his conviction for unlawful use of the RV, nor does he dispute the evidence of substantial damage done to the RV while it was in his possession. And, the state only needed to prove that Lainhart had committed the offense; it was not required to rule out other persons' involvement in the commission of the offense. We therefore reject Lainhart's conclusory argument suggesting he cannot be held accountable for the actions of others. *See State v. Manzanedo*, 210 Ariz. 292, ¶ 4, 110 P.3d 1026, 1027 (App. 2005). The trial court did not err in denying Lainhart's Rule 20 motion.

B. Proof of Actual Damages

¶14 Lainhart next argues the state presented insufficient evidence to prove the element of damages. Criminal damage is a class four felony if the defendant recklessly damages property of another "in an amount of ten thousand dollars or more." A.R.S. § 13-1602(B)(1). "[T]he state has the burden of establishing the amount of damages, . . . and demonstrating what method it used to calculate the amount." *State v. Brockell*, 187

Ariz. 226, 229, 928 P.2d 650, 653 (App. 1996). “If a defendant disputes the state’s method, he or she can present evidence of what the defense deems a more reasonable calculation.” *Id.* Relying on *Brockell*, Lainhart contends the state was required to present evidence of the actual cost to repair or replace the damaged RV. Accordingly, Lainhart maintains, the repair and cleaning estimates and the victim’s testimony as to the value of the RV were insufficient evidence to prove the amount of damages. We disagree.

¶15 In *Brockell*, we identified the two methods most often used to determine the amount of damage to personal property in the context of the criminal damage statute. When property has been “damaged beyond repair, the usual measure of damage is market value less any salvage value.” *Brockell*, 187 Ariz. at 228, 928 P.2d at 652. However, “[i]f the property is susceptible of repair . . . the proper measure is the reasonable cost of repair.” *Id.* Contrary to Lainhart’s argument, neither method requires proof that the damaged property was actually repaired or replaced in order to find a defendant guilty of criminal damage. Such an interpretation of the statute would be nonsensical, and we do not interpret statutes in a manner that would make them illogical. *See Linda V. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 76, ¶ 11, 117 P.3d 795, 798 (App. 2005) (we will not interpret statutes to create absurd, illogical result).

¶16 Accordingly, the state only needed to show the “reasonable cost of repair” or the “market value” of the property. *Brockell*, 187 Ariz. at 228, 928 P.2d at 652. It was for the jury to weigh the evidence and decide whether the state sustained its burden. *Id.* at 229, 928 P.2d at 653. We therefore find the repair and cleaning estimates, assessing

the nature and extent of the damages, and the testimony about the RV's value constituted sufficient evidence to prove the amount of damages. *See Mathers*, 165 Ariz. at 67, 796 P.2d at 869. The trial court did not err in denying Lainhart's motion for judgment of acquittal on this issue.

II. Restitution Award

A. Admissibility of the NADA Report

¶17 Lainhart similarly argues that, to be recoverable as restitution, economic loss must be the "actual loss" sustained by the victim, as evidenced by the "actual cost" to repair or replace the RV. Accordingly, he contends the evidence of the NADA report as to the value of a comparable RV was irrelevant to determining the victims' actual loss.²

¶18 At the restitution hearing, Lainhart objected to the admission of the report on grounds it lacked proper foundation; he did not object on the basis of relevancy. "A party must make a specific and timely objection at trial to the admission of certain evidence in order to preserve that issue for appeal." *State v. Hamilton*, 177 Ariz. 403, 408, 868 P.2d 986, 991 (App. 1993). "And an objection on one ground does not preserve the issue on another ground." *State v. Lopez*, 217 Ariz. 433, ¶ 4, 175 P.3d 682, 683 (App.

²Lainhart claims in the heading to his argument that "[t]he trial court erred by allowing evidence of the repair and cleaning estimates to be used in determining [his] level of culpability on the criminal damage count." Because Lainhart does not develop this argument or support it with any authority, we do not address it further. *See* Ariz. R. Crim. P. 31.13(c) (setting forth required contents of appellate briefs, including argument and citation to authorities); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (claim waived on appeal by insufficient argument).

2008). “When a party fails to object properly, we review solely for fundamental error.”
Id.

¶19 Relevant evidence is admissible unless otherwise prohibited. Ariz. R. Evid. 402. Relevant evidence is evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Ariz. R. Evid. 401. However “[t]he threshold for relevance is a low one.” *State v. Roque*, 213 Ariz. 193, ¶ 109, 141 P.3d 368, 396 (2006). And “absent a clear abuse of its considerable discretion,” we will not disturb the trial court’s ruling on the admissibility of evidence. *State v. Alatorre*, 191 Ariz. 208, ¶ 7, 953 P.2d 1261, 1264 (App. 1998).

¶20 A defendant who has been convicted of a crime shall be ordered “to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court.” A.R.S. § 13-603(C); *see also* A.R.S. § 13-804(B) (requiring consideration of “all losses caused by the criminal offense or offenses for which the defendant has been convicted”). To be recoverable as restitution, “(1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss.” *State v. Madrid*, 207 Ariz. 296, ¶ 5, 85 P.3d 1054, 1056 (App. 2004); *see also* A.R.S. § 13-105(16) (defining “economic loss” as “any loss incurred by a person as a result of the commission of an offense” including “lost interest, lost earnings and other losses that would not have been incurred but for the offense”). The underlying principle of “Arizona’s statutory scheme requiring restitution in criminal cases” is to

“restor[e] the victim to his economic status quo that existed before the crime occurred.” *In re William L.*, 211 Ariz. 236, ¶ 11, 119 P.3d 1039, 1042 (App. 2005); *see also State v. Guilliams*, 208 Ariz. 48, ¶ 12, 90 P.3d 785, 789 (App. 2004) (purpose of restitution statutes is to make victims whole).

¶21 Here, the evidence established that the RV was in above-average condition when Hughes first had loaned it to Lainhart and that it sustained substantial damage as a result of Lainhart’s criminal conduct.³ To restore the victim to his “economic status quo,” the trial court relied on the NADA report concerning the market value of the RV. According to the report, the average retail price for the same make and model of RV, in above-average condition and with low mileage, was \$11,352. And although the report was for a 1992 model, the court determined it was appropriate here because the Hughes RV was in above-average condition. The court also took into account that the report gave the value as of August 2009, approximately a year after the incident. It stated: “the testimony was that this vehicle was above average at the time, and so taking into account depreciation and then adding for above average, . . . it’s appropriate for the Court to rely on the figure of \$11,352.” Because the NADA report fairly represented the economic loss to the victims, it was relevant and the trial court thus did not err in relying on it for purposes of determining the restitution award. *See State v. Nash*, 143 Ariz. 392, 402, 694 P.2d 222, 232 (1985) (noting that even out-of-court sources may be considered, provided information disclosed to defendant who has opportunity to explain or deny it).

³The evidence established that the RV was a total loss. The repair and cleaning estimates totaled \$12,719.60, which exceeded the average retail price of \$11,352.00 as shown in the NADA report.

B. Amount of Restitution

¶22 As he did in relation to the underlying offense, Lainhart argues the trial court's restitution award also bore no reasonable relationship to an "actual" loss sustained by the victim. A trial court "has wide discretion in setting restitution based on the facts of each case." *State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312 (App. 1992). An appellate court will uphold a restitution award "if it bears a reasonable relationship to the loss sustained." *State v. Dixon*, 216 Ariz. 18, ¶ 11, 162 P.3d 657, 660 (App. 2007).

¶23 Lainhart does not challenge the method the trial court used to calculate the restitution amount or the accuracy of the court's calculation. Rather, he argues that "no reliable evidence was presented as to the actual cost to replace or repair the [RV]" for the trial court to arrive at the restitution amount under any method. As to Lainhart's claim regarding the reliability of evidence, we do not weigh the evidence; that is the function of the fact-finder. *See Cox*, 217 Ariz. 353, ¶ 27, 174 P.3d at 269 (explaining credibility of witnesses and weight of evidence questions exclusively for fact-finder); *see also State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995) ("The finder-of-fact, not the appellate court, weighs the evidence and determines the credibility of witnesses."). To the extent Lainhart claims the "actual cost" is the proper measure of a victim's losses for purposes of determining the restitution amount, we have addressed this issue above. The NADA report concerning the RV's market value bore a reasonable relationship to the victims' loss and, thus, was relevant. *See Dixon*, 216 Ariz. 18, ¶ 11, 162 P.3d at 660. The trial court did not err in basing part of the restitution award on the NADA report.

Disposition

¶24 For the reasons stated above, we affirm Lainhart’s convictions, the probationary terms imposed, and the restitution award.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge