

ADA ELLIOTT - MARKET VALUE

A person goes to a store and steals an item. The wholesale price is \$199, the retail price is \$249, and with tax the price is over \$250. Price is important because it's a felony if over \$250. NMSA 1978, Section 30-16-20. Which price do we use in charging the offender? ANSWER: Retail price.

MARKET VALUE OF AN ITEM IS THE RETAIL PRICE

Market value is used when value is an issue. Supreme Court of New Mexico has held that the terms "market value" and "retail value" are identical. Tunnell v. State (1983).

DEFINITION OF MARKET VALUE

Market value does not mean cost or replacement value. State v. Gallegos (1957). It means the price at which the property could ordinarily be bought and sold at the time of the alleged criminal act. Jury Instruction 14-1602.

MARKET VALUE DOESN'T INCLUDE TAXES

Tax is not to be considered when determining value of an item, unless the advertised retail or actual market price of an item includes the tax. Tunnell v. State (1983).

OWNER COMPETENT TO TESTIFY AS TO MARKET VALUE OF HIS/HER PROPERTY

It is a general rule that an owner of property is competent to testify as to the value of his or her property. State v. Romero (1975).

EMPLOYEE COMPETENT TO TESTIFY AS TO MARKET VALUE OF PROPERTY

A motel manager testifying that he was familiar with the value of television sets sold to motels and that a used set like the one involved in the crime was worth between \$150 and \$200 was qualified to testify regarding value. Court of Appeals saw no reason to distinguish between the opinion evidence of a manager who is familiar with value and the opinion evidence of an owner. State v. Williams (1972).

Testimony of employee at wastewater plant concerning value of laboratory equipment stolen from plant was sufficient, despite employee's admission that he was unfamiliar with actual market for used equipment; employee knew age of equipment, condition when stolen, original cost, and amount he, as informed buyer, would pay for each item. State v. Hughes (1989).

DA REQUEST: Have the victim/witness provide - in their own statement - the value of the property.

