

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	
)	Supreme Court No. 20190365
vs.)	
)	District Court No. 13-2018-CR-00299
Jody Lynn Kuntz,)	
)	
Defendant-Appellant.)	

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM DISTRICT COURT ORDER FOR RESTITUTION
ENTERED OCTOBER 24th, 2019

DUNN COUNTY DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
HONORABLE DANN GREENWOOD, PRESIDING

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STATEMENT OF THE ISSUE

[¶1] Whether the District Court abused its discretion with regards to the amount of restitution awarded to the victim in this case.

STATEMENT OF THE CASE

[¶2] Appellant, Jody Kuntz, (Kuntz) appeals the District Court’s order awarding \$9,000 in restitution to Bruin E&P Operating L.L.C., (Bruin) the victim of Kuntz’s underlying criminal conduct. (Appellant’s Appendix (App.) 16). Kuntz pled guilty to Criminal Mischief (C Felony) and Criminal Trespassing (A Misdemeanor) on September 3rd, 2019. (App. 9). On September 5th, 2019, the State filed an Affidavit for Restitution (App. 13). The Criminal Judgment was signed by Southwest Judicial District Judge Dann Greenwood and entered on September 10th, 2019. (App. 11). Paragraph [3][b][2] of the Criminal Judgment states “Restitution . . . shall be established by separate order. An Affidavit . . . has been filed . . . (App. 10). On September 11th, 2019, Kuntz through her attorney, Mark Sherer filed an Objection to Restitution and Request for Hearing (Docket Index (Dkt.) #54, App. 5). A hearing regarding restitution in this matter was held on October 22nd, 2019, Judge Greenwood presiding. At the end of the hearing Judge Greenwood concluded the State, by a preponderance of the evidence had proven damages supporting the requested \$9,000 in restitution. (Restitution Transcript (Tr.) 28:21-3). The Order for Restitution was signed by Judge Greenwood and entered on October 24th, 2019. (App. 19). On November 21st, 2019, Kuntz filed a Notice of Appeal (App. 18). This appeal ensued.

STATEMENT OF THE FACTS

[¶3] On Friday, October 26th, 2018, Dunn County Sheriff's Deputies Daniel Halonen and John Vetsch responded to a call for service regarding an intoxicated female, identified as Kuntz, attempting to turn off pressure valves at an oil pad near 100th Avenue Northwest and BIA 14. (Dkt. #3). Kuntz was charged by Criminal Complaint on October 30th, 2018. (Dkt. #13), with Criminal Mischief, a C Felony, and Criminal Trespass, an A Misdemeanor. (Dkt. #3). On March 20th, 2019, Kuntz waived her preliminary hearing. The State filed the Criminal Information on March 22nd, 2019. Following Kuntz's plea of guilty and the subsequent filings related to restitution, Judge Greenwood heard the case for restitution on October 22nd, 2019.

[¶4] At the Restitution Hearing the State called Dustin Grosulak (Grosulak) as a witness. (Tr. Pg. 2). Grosulak is the Health, Safety and Environmental Manager for Bruin. (Tr. 4:9-19). He became involved in the incident on Friday, October 26th, 2019, because it was a safety event. (Tr. 4:21-24). Grosulak was advised an unauthorized person was observed on the well pad. (Tr. 5:2-5). Due to the time of night and lack of light, the decision was made to shut down production to ensure there were no safety issues. (Tr. 5:7-21). The pad remained inoperable from around seven or eight on the evening of October 26th, 2018, until around noon on October 27th, 2018 in order for the site to be inspected for safety. (Tr. 5:8,6:1-2). It was determined there was no physical damage caused by Kuntz but her actions did result in financial loss to Bruin. (Tr. 6:3-13).

[¶5] An email was submitted as State's Exhibit 1 during the Restitution Hearing (Dkt. #59). This email chain between the Dunn County State's Attorney's Office and

representatives of Bruin, including Grosulak, explains how the victim determined the dollar amount of the financial loss suffered between October 26th and 27th, 2018. At the hearing Grosulak explained the formula he gave the State's Attorney's Office was based off of three factors: the per barrel amount Bruin was hedge insured for, the average production between October 19th and 25th, 2018 for the Diente Pad wells, and the amount of time they were shut down due to Kuntz's criminal actions October 26th, 2018. (Tr. 6:15, 7:20-9:11). Grosulak explained he took the average of the seven previous days' production, including well down time, once that was determined he multiplied it by the time (in days) the wells were unable to operate and then multiplied that number by Bruin's hedged price. (Id., Dkt. #59). The amount came out to \$9,363.75 based on the lowest possible value Bruin would have received for a barrel of crude oil. (Id.) Bruin chose to round the number down to \$9,000. (Tr. 9:14-24).

[¶6] Grosulak was cross-examined about whether the determination of average production considered two of the wells' reduced production between October 19th and 25th, 2018. He clarified the average did take this into consideration and the down time was not a factor in determining the loss of production. (Tr. 10:17-11:1, 16:12-7). Kuntz argued because the information provided was not specific to the dates and times in question, nor was there effort by Bruin to mitigate its damages, the dollar figure offered was not reasonable under North Dakota Century Code (N.D.C.C.) 12.1-32-08. (Tr. 21:13-23:6). In his decision from the bench and Order for Restitution, Judge Greenwood determined the State had met its burden of proof and the amount of restitution requested by Bruin was fair, reasonable and directly related to Kunz' actions. (Tr. 26:16-28:14, App. 16).

ARGUMENT

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN AWARDING THE REQUESTED RESTITUTION TO THE VICTIM

[¶7] In State v. Michels, (2020 ND 101, May 7th, 2020), the Criminal Judgment was reversed in part because the District Court abused its discretion and awarded excessive restitution. Id. at ¶ 23. The amount to be compensated to the victim was greater than damages actually suffered. Id. ““When reviewing a restitution order, we look to whether the district court acted “within the limits set by statute,” . . . a standard similar to our abuse of discretion standard.” “A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, if its decision is not the product of a rational mental process leading to a reasoned determination, or if it misinterprets or misapplies the law.”” Id. at ¶ 21, (quoting State v. Strom, 2019 ND 9, ¶ 3, 921 N.W.2d 660, (quoting State v. Blue, 2018 ND 171, ¶ 13, 915 N.W.2d 122, quoting State v. Carson, 2017 D 196, ¶ 5, 900 N.W.2d, 41.) Michels awarded to the victim both the return of the stolen property and monetary restitution for full retail value of the property. Id. at ¶ 22. In N.D.C.C. 12.1-32-08(1) the courts’ determination of restitution **shall** take into account 1) the reasonable damages sustained because of the crime, 2) they were directly related to the offense committed and 3) the actual expenses were incurred because of the defendant’s criminal activity. State v. Kostelecky held a victim is entitled to be made whole through **reasonable** restitution based on the entirety of actual loss. Id. (2018 ND 12 ¶ 12, 906 N.W.2d, 77). Unlike the victim in Michels, Bruin is not being overcompensated. The award of \$9,000 in restitution was based on rational mental process leading to a reasoned determination.

[¶8] Kuntz does not argue Bruin's loss was not related to her criminal actions. She raises the issue the dollar amount is unreasonable because it is speculative. In his opinion from the bench, Judge Greenwood articulated the basis he used to determine the \$9,000 represented actual reasonable losses Bruin incurred. Through Grosulak's testimony sufficient evidence was provided to determine Bruin's losses were \$9,000 or more. The price of oil in October 2018 was higher than the hedged amount used in the calculations. Determination of production activity factored in the non-operational wells in reaching the average barrels per day. Bruin also reduced the requested restitution by \$363.75. All this information, both through testimony and common knowledge, led Judge Greenwood to the conclusion Kunz was reasonably responsible for at least \$9,000 in damages to Bruin.

[¶9] Judge Greenwood did not act in an arbitrary, unreasonable, or unconscionable manner, and his decision was the product of a rational mental process leading to a reasoned determination. He noted it is not always possible to have a precise determination, but the damages claimed were based on reasonable beliefs and efforts by Grosulak to determine damages based on Kuntz's actions. The amount awarded was **reasonably** based on the evidence and testimony provided. This differs from Michel where the monetary compensation was the full retail value of the returned tires instead of the diminished value. If the number of barrels alleged to be lost was based on the full production capability of the Diente pad, there would be argument it was inflated. The number instead took the average based on the reduced production of the pad for the seven days prior to the shutdown. Bruin used the lowest dollar amount it would receive for a barrel of oil, even

though oil prices were higher in October 2018. The restitution amount was conservative and Judge Greenwood made a reasoned determination \$9,000 in damages had occurred.

CONCLUSION

[¶10] There was no abuse of discretion in determining Kuntz was liable for \$9,000 in damages suffered by Bruin as a result of her actions the night of October 26th, 2018. Based on the foregoing, the State respectfully asks this Court to deny Kuntz's Motion to Reverse the District Court's Order for Restitution.

Dated the 13th day of May, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to North Dakota Rules of Appellant Procedure 32(e), I certify the Appellee's Brief is not in excess of thirty-eight (38) pages. The document consists of twelve (12) pages, including the cover page, table of contents, table of authorities, the written brief, the certificate of electronic service and the certificate of compliance.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on May 13th, 2020, I served an electronic copy of Appellee's Brief
via e-mail through the Supreme Court File and Serve System upon:

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