

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff/Appellee,)	Supreme Court No. 20220059
)	
-vs-)	Burleigh County Case No.
)	08-2020-CR-01444
Benjamin Greff,)	
)	
Defendant/Appellant)	

BRIEF OF PLAINTIFF - APPELLEE
STATE OF NORTH DAKOTA

APPEAL FROM AMENDED ORDER DEFERRING IMPOSITION OF SENTENCE
DATED JANUARY 21, 2022

Burleigh County District Court
South Central Judicial District
The Honorable Pamela Nesvig, Presiding

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ISSUE PRESENTED FOR REVIEW

[¶1] I. Whether the District Court's Order for Restitution was Proper.

STATEMENT OF FACTS

[¶2] In this matter, Defendant was charged with Theft of Property- C Felony. Defendant was alleged to have taken a 1998 Lund boat, valued in excess of \$1,000.00. Defendant pled guilty to this offense on October 15, 2021. A restitution hearing was to be held at a later date.

[¶3] The restitution hearing in this matter was held on January 21, 2022. The State presented testimony from L. H. She testified that the stolen boat belonged to her and her boyfriend, B.B. (Tr. p. 3, lines 12-15). She stated that only the shell of the boat was recovered. (Tr. p. 3, line 25- p. 4 line 1). Restitution was also sought for items that were missing from the boat. Included among those were approximately 450 crankbaits. (Tr. p. 4, lines 19-25). L. H. testified that those averaged \$9.00 per item, for a total of \$4,050.00 for the crankbaits. (Tr. p. 5, line 1). She testified that there were a lot more than 450 missing from the boat. (Tr. p. 5, lines 8-10; p. 7, lines 5-13).

[¶4] Also missing from the boat was rain gear, with a requested value of \$525.00. (Tr. p. 5, lines 11-16). L. H. testified that this value was determined based on B. B. using a \$500.00 gift card and a \$50.00 gift card to purchase the rain gear. (Tr. p. 5, lines 18-21).

[¶5] Restitution in the amount of \$500.00 for reassembly of the boat was also sought. (Tr. p. 5, line 24- p. 6, line 1). L. H. testified that this was a low estimate for this cost. (Tr. p. 6, lines 1-8).

[¶6] Defendant also testified at the restitution hearing. Defendant testified that he did not see any crankbaits in the boat or receive any from this boat. (Tr. p. 11, lines 5-8).

He also testified that he did not see any rain gear in the boat or receive any rain gear from the boat. (Tr. p. 11, lines 16-20).

[¶7] The Court ordered restitution at the conclusion of the hearing. The Court included \$500.00 for reassembly costs of the boat. (Tr. p. 15, lines 1-9). The Court also included the \$525.00 for the rain gear. (Tr. p. 15, line 10). The Court additionally included the requested amount for the crankbaits. (Tr. p. 15, line 11- p. 16, line 10). The Court ordered the total amount of restitution as \$5,075.00. (Tr. p. 16, line 7).

LAW AND ARGUMENT

I. Whether the District Court's Order for Restitution was Proper

[¶8] This Court has stated that the standard of review for restitution matters is well established. State v. Walker, 2019 ND 292, ¶5, 936 N.W.2d 45. In Walker, this Court stated:

“When reviewing a restitution order, we look to whether the district court acted within the limits set by statute, which is 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. (citing State v. Rogers, 2018 ND 244, ¶23, 919 N.W.2d 193). The Court noted that the district court had a wide degree of discretion for awarding restitution, considering the reasonable damages incurred by a victim, with the State having the burden to prove restitution by a preponderance of the evidence. Id. (citing Rogers at ¶23).

[¶9] North Dakota Century Code 12.1-32-08 states in its relevant part:

“In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense,

which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action.”

Here, the Court’s Order regarding restitution fell within its wide discretion regarding such orders. The Court ordered restitution for damage to the boat and for items missing from the boat. These were reasonable damages sustained by the victim of expenses actually incurred by the victim and were directly related to the criminal offense.

[¶10] Providing guidance regarding the restitution ordered is the case of State v. Bruce, 2018 ND 45, 907 N.W.2d 773. In Bruce, the Supreme Court addressed restitution that was ordered, which included funeral costs for the victim’s family and transportation costs to and from court for the victim’s father. Bruce at ¶3. The Supreme Court found that the funeral costs were a direct result of defendant’s criminal conduct and expenses actually incurred, as were the travel costs for court for the victim’s father. Id. at ¶¶7, 15.

[¶11] Here, the damage to the boat and missing items from the boat were directly related to the crime committed by Defendant. These expenses were actually incurred by the victim in this case.

[¶12] Defendant challenges the amount ordered, with Defendant testifying that he never observed any crankbaits or rain gear in the boat. However, the Court disagreed and ordered the full amount requested by the victim, as it relates to the theft itself. The North Dakota Supreme Court addressed this issue in State v. Gendron, 2008 ND 70, 747 N.W.2d 125. In Gendron, the defendant was charged with internal theft from Kohl’s and after a restitution hearing, was ordered to pay \$7,963.52. Gendron at ¶¶2, 6. The Court noted that trial courts have a wide degree of discretion in awarding restitution and that evidentiary imprecision on the amount of damages does not prevent recovery, with damages that may be hard to prove left to the discretion of the finder of facts. Id. at ¶8 (citing State v. Tupa,

2005 ND 25, ¶8, 691 N.W.2d 579; Keller v. Bolding, 2004 ND 80, ¶21, 678 N.W.2d 578; B.W.S. Invs. v. Mid-Am Restaurants, 459 NW.2d 759, 764 (N.D.1990)). The Court went on to find that the limitation on credit for returned property was within the lower court's discretion. Id. at ¶9. The Court also supported the lower court's finding regarding approximate values for items being included in the restitution amount, finding that the lower court had not acted arbitrarily, unreasonably or unconscionably by allowing such award. Id. at ¶10.

[¶13] Here, the Court heard the testimony of L. H. along with Defendant. Victim testified to the amount of crankbaits and as to the value of those. Although no receipts were provided, she did provide details regarding the amounts and values of these items. Victim was able to do the same regarding the rain gear and the estimate to repair the boat. The Court was in the position to assess credibility and make a determination regarding the restitution amount to be ordered. The Court's finding consistent with the victim's request is supported by the testimony and evidence presented at the restitution hearing. The Court giving more weight to the victims' testimony over the Defendant's is within its discretion and not erroneous.

[¶14] This is consistent with this Court's ruling in State v. Yellowhammer, 2022 ND 106. In Yellowhammer, the Supreme Court upheld a restitution order, which included future medical expenses of \$95,000. Yellowhammer at ¶4. The Supreme Court determined that this award was appropriate, although the expenses had yet to be incurred and that the estimated cost was sufficient for the lower court's order of restitution. Id. at ¶¶12-15.

CONCLUSION

[¶15] The Court's Order for Restitution in this matter was proper. The damages awarded were directly related to Defendant's criminal activity. The District Court's Order should be affirmed.

RESPECTFULLY SUBMITTED:

Dated this 31st day of May, 2022.

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CERTIFICATE OF COMPLIANCE

[¶ 1] COMES NOW Justin J. Schwarz of Bismarck, North Dakota, and hereby certifies that the attached Brief of the Appellee is in compliance with Rule 32(a)(8)(A), North Dakota Rules of Appellate Procedure.

[¶ 2] The number of pages in the principal Brief, excluding any addenda, is eight (8) pages, according to the page count of the filed electronic document.

Dated this 31st day of May, 2022.

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STATE OF NORTH DAKOTA)
) ss
 COUNTY OF BURLEIGH)

David M. Becker, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 31st day of May, 2022, I served the following:

1. Brief of Plaintiff-Appellee
2. Certificate of Compliance
3. Affidavit of Service

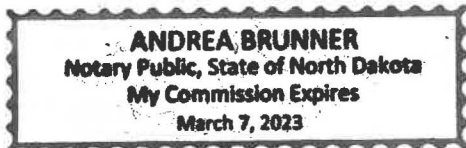
on the following electronic transmission to the listed email address of:

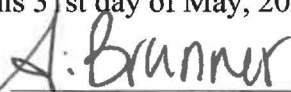
Steve Balaban
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steve@ndbalabanlaw.com

which address is the last known email address of the addressee.


David M. Becker

Subscribed and sworn to before me this 31st day of May, 2022.




Notary Public,
Burleigh County, North Dakota