

IN THE SUPREME COURT OF NORTH DAKOTA

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State of North Dakota,  
  
Plaintiff and Appellee,  
  
v.  
  
Shon Daniel Taylor,  
  
Defendant and Appellant.

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Supreme Court File No.  
20220038  
Ward County District Court No.  
25-2020-CR-02033  
**APPELLANT BRIEF**

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BRIEF OF APPELLANT, SHON DANIEL TAYLOR

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Appeal from the Criminal Judgment

Entered on the 5<sup>th</sup> day of January, 2022.

In District Court, Ward County, State of North Dakota

The Honorable Richard L. Hagar Presiding

ORAL ARGUMENT REQUESTED

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STATEMENT OF THE ISSUES

- [¶1]    **ISSUE I.**    **Was the failure to question State Farm Insurance Adjustor Tai Dang an obvious error which affect the substantial rights of Defendant/Appellant Shon Daniel Taylor?**
- [¶2]    **ISSUE II.**    **Should the clerical error of multiplying 170 x 200 and getting a result of \$35,000.00 be corrected to \$34,000.00?**

### NATURE OF THE CASE

[¶3] Defendant and Appellant Shon Daniel Taylor (Mr. Taylor) was convicted of burglary. After judgment was filed on this burglary conviction a restitution hearing on the items taken in the burglary was held on January 5, 2022.

[¶4] After that the judgment was amended to include restitution on January 21, 2022.

[¶5] A notice of appeal and order for transcript was filed January 27, 2022.

[¶6] A notice of appeal and order for transcript was filed January 27, 2022.

[¶7] A notice of filing the notice of appeal was filed on January 27, 2022.

[¶8] A Clerk's Supplemental Certificate of Appeal was filed on March 25, 2022.

[¶9] This matter is now before the North Dakota Supreme Court.

### STATEMENT OF FACTS

[¶10] When Jon Doe's father died, John Doe inherited both real and personal property from his father. Two men Shon Daniel Taylor (Mr. Taylor) and Paul Miller (Mr. Miller) broke into one of the buildings that John Doe inherited and stole some of the personal property that John Doe inherited from his father. Both Mr. Taylor and Mr. Miller were arrested for and convicted of the burglary.

[¶11] Separate restitution hearings were held for Mr. Miller and Mr. Taylor. At Mr. Millers restitution hearing he was ordered to pay \$64,005.00 restitution to the victim. At Mr. Taylors restitution hearing he was ordered to pay \$59,089.00 restitution to the victim.

[¶12] This appeal is limited to what occurred and was said at Mr. Taylor's restitution hearing. During that hearing the victim listed all items taken in the burglary and then used a computer to research the value of the items taken in the burglary.

[¶13] No one else at Mr. Taylor's restitution hearing did any research to determine the value of the items taken during the burglary or gave any opinion on the value of items taken during the burglary.

[¶14] The State Farm Insurance Company (State Farm) is involved in this case because of an insurance policy that State Farm had with the victim on the items taken in the burglary. That policy required State Farm place values on the items taken in the burglary. This value had nothing to do with what the victim decided their values were worth. The State Farm values should have been told to the Judge when the adjuster for State Farm Tai Dang testified. Had this been done the trial judge could have decided whether the State Farm values the values the victim placed on the items or an amount in between the victim's and State Farm's value was the correct value.

#### STANDARD OF REVIEW

[¶15] The Standard of review when the error is a nonconstitutional error according to State v. Thiel, 411 N.W.2d 66 (N.D. 1987) is to determine whether the error had a significant impact upon the verdict, but it does not have to find that the error was harmless beyond a reasonable doubt.

#### [¶16] LAW AND ARGUMENT

**ISSUE I. Was the Failure to question State Farm Insurance Adjustor Tai Dang an obvious error which affect the substantial rights of Defendant/Appellant Shon Daniel Taylor?**

[¶17] In the case before the court the problems all relate to article I. §25n: To preserve and protect the right of crime victims to justice, to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, and to ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to criminal defendants and delinquent children, all victims shall be entitled to the following rights, beginning at the time of their victimization.

n. The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct. All monies and property collected from any person who has been ordered to make restitution shall be first applied to the restitution owed to the victim before paying any amounts owed to the government (Article I § 25n is hereinafter called Marcy's Law).

[¶18] Because of Marcy's law the trial judge said: Tr.pg.51, L.19-25, pg.52, L.1-17.

THE COURT:

Well, my understanding is that, based on Mr. Craig's information to the Court, Mr. -- I should say Mr. Taylor is unemployed, been unemployed, has had difficulty finding employment. He's been homeless on different occasions. So, his ability to pay today, my guess would be, if I was going to base it on just today and solely on today, would be he has almost no ability to pay either one of those, the State Farm or the other one. And as you said, however, for the personal victim requirements for restitution, that has kind of, in a sense, gone out the window with regard to Marcy's Law. But with the State Farm, there is always the possibility. I don't know of any information as to why he's not capable of working. I know he is unemployed and so forth, but I don't know of any physical aspect that keeps him from working. I know there are jobs available, et cetera. Again, he may not be able to pay it off in a certain timeframe, but there is the possibility that over a period of time he would be able to pay it. So, I would find that the \$13,000 would not be an insurmountable amount. It would just be over a period of time. He's not an older gentleman. I don't know exactly what his age is, but he appears to the Court to be in his



mid-range for age. So I think he's still healthy enough and has the capacity to earn enough money to pay back the 13,000. So that's what I rule as a finding. Anything else?

[¶19] From the above it is apparent that the trial judge was aware there will be problems in the future with Mr. Taylor finding a job, paying restitution, and being revoked for nonpayment of restitution.

[¶20] The case that decides how Marcy's Law is to be applied is *State of North Dakota vs. Strom*, 2019 ND 9, 921 N.W.2d 660. According to *Strom* [9]

[¶9] To clearly state the scope of this decision, it is necessary to articulate what we do not decide here. In this matter, we examine only an award of restitution and not a contempt hearing or probation revocation for non-payment, and thus we limit consideration of ability to pay only in the context of setting the total amount of restitution. See *Blue*, 2018 ND 171, ¶ 44, 915 N.W.2d 122 (Jensen, J., concurring and dissenting). We do not completely preclude consideration of ability to pay. There may be times when such consideration may be appropriate, *i.e.*, when determining the time or manner of payment or whether a defendant's failure to pay is willful.

[¶21] At the restitution hearing in the case now before the court there was nothing done by the defense to preserve an objection to the victim's values. However, at the restitution hearing on January 05, 2022 there was someone who testified who had values for the items taken in the burglary but he was not questioned about the values. That person was Tai Dang who is a claims adjustor for State Farm. According to Mr. Dang's testimony State Farm because of the burglary paid out to the victim \$13,355.38. This payment had to relate to what State Farm values each item taken in the burglary. The amount State Farm paid on the items insured had nothing to do with the values the victim placed on the items.

[¶22] If the values State Farm placed on the items taken in the burglary were greater than the values placed by the victim this fact could have to be brought up during the hearing to show that Mr. Taylor was getting a good deal because of the value the victim placed on the items taken in the burglary were less than State Farm's values. However,

neither the victim nor that State Farm said anything about the values, State Farm placed on the item's taken in the burglary.

[¶23] If the values for the items taken in the burglary were the same for both the victim and State Farm there would have been no need for the victim to research the values. Therefore, if the values for items taken in the burglary were the same for both State Farm and the victim the victim shouldn't have been reimbursed for the time, he spent researching values of the items taken in the burglary.

[¶24] If the values State Farm placed on the items taken in the burglary were less than the values the victim placed on the items the trial judge should have been allowed to consider both values and then determine whether the victims value, State Farms value or some amount in between was the correct value.

[¶25] Since there was no objection to the victims values the only way to raise the issue of values at this time is by using N.D.R.Crim.P.52(b) Obvious error. an obvious error or defect that affects substantial rights may be considered even though it was not brought to the court's attention.

[¶26] According to State v. Thiel, 411 N.W.2d 66 (N.D. 1987) where an issue has not been properly preserved for review, the inquiry is limited to determining whether the error constitutes an obvious error which affects substantial rights of the defendant; in cases of nonconstitutional error, error had a significant impact upon the verdict but it does not have to find that the error was harmless beyond a reasonable doubt. State v. Thiel, 411 N.W.2d 66 (N.D. 1987).

[¶27] This case involves a nonconstitutional error. Therefore the court has to determine whether the error had a significant impact upon the verdict, but it does not have

to find that the error was harmless beyond a reasonable doubt. The failures of the trial court to have State Farm's values had a significant impact on the values assessed for the items taken in the burglary. It also effected Mr. Taylors right to have the items taken in the burglary from being properly evaluated.

**ISSUE II. Should the clerical error of multiplying 170 x 200 and getting a result of \$35,000.00 be corrected to \$34,000.00?**

[¶28] The other problem with this case is a clerical error that multiplied 170 x 200 and got a result of \$35,00.00. That calculation appears in the Tr.pg.9.L.12-14.

Q. Okay So then you multiplied 200 by the 170 and that's where you get the 35,000?

A. The 35,000, yes.

ORAL ARGUMENT

[¶29] Oral argument has been requested to emphasize and clarify the appellant's written arguments on their merits.

CONCLUSION

[¶30] This case should be remanded to the district court for a further hearing on the values of each of the items taken and the clerical error on the value of the items taken so that the value is changed from \$35,000.00 to \$34,000.00.

Dated this 4<sup>th</sup> day of April, 2022

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Defendant and Appellant.

Supreme Court File No. 20220038  
Ward County District Court No.  
25-2020-CR-02033

**CERTIFICATE OF  
COMPLIANCE**

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[¶1] I certify that this appellant's brief and complies with the page limit of 38 for the brief set forth in N.D. R. App. P. 32(a)(8)(A). The brief in this matter consists of 11 pages.

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State of North Dakota,  Plaintiff and Appellee,  v.  Shon Daniel Taylor,  Defendant and Appellant.	Supreme Court File No. 20220038 Ward County District Court No. 25-2020-CR-02033 <b>CERTIFICATE OF SERVICE</b>
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[¶1] I certify that a true and correct copy of the following, specifically:

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Dated this 4<sup>th</sup> day of April, 2022.

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Rozanna Christine Larson  
Ward County States Attorney  
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and by U.S. postal service with proper postage affixed to:

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Dated this 7<sup>th</sup> day of April, 2022.

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