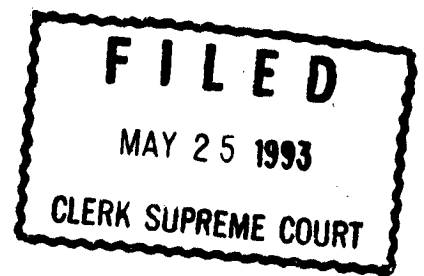


IN THE COURT OF APPEALS OF IOWA

No. 3-102 / 91-845



000859

STATE OF IOWA,

Appellee,

vs.

JO CARROLL RICH,

Appellant.

Appeal from the Iowa District Court for Washington County, Richard J. Vogel, Judge.

Defendant, convicted of first-degree theft, appeals a judgment of the district court ordering her to pay restitution of \$58,780.12 to her ex-employer. **AFFIRMED.**

James L. Ottesen of Ottesen, Hoffman & Priester, Davenport, and Victor H. Dietz, Sigourney, for appellant.

Bonnie J. Campbell, Attorney General; Thomas G. Fisher, Jr., Assistant Attorney General; Gerald N. Partridge, County Attorney; and Barbara A. Edmondson, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

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HABHAB, J.

The defendant, Jo Carroll Rich, convicted of first-degree theft, appeals from the district court judgment ordering her to pay \$58,780.12 in restitution to her ex-employer. Rich claims that there was insufficient evidence for the district court to determine that she had stolen more than the \$10,000 she admitted.

Rich had been the bookkeeper for a veterinary clinic from its inception in 1979 until July 1989. She controlled most cash receipts and deposits from her employer's business. During this time period, only a small portion of cash receipts were deposited in the bank. When questioned about the loss of funds from the business accounts, Rich admitted she had stolen approximately \$10,000. The State determined the loss to be over \$71,000, based upon the records of the clinic and upon historical information obtained for the periods after Rich was no longer bookkeeper.

The district court found that the State's claim for restitution was reasonable, and ordered Rich to pay \$58,790.12.¹ Rich appeals the restitution determination.

Our review of the sentencing court's findings is on error. State v. Holmberg, 449 N.W.2d 376, 377 (Iowa

1. The district court felt interest at 5-1/4% was inappropriate and reduced the award accordingly. The question of interest was not challenged on appeal; therefore, we do not address that issue.

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1989). Therefore, factual findings will be affirmed if supported by substantial evidence. Iowa R. App. P. 14(f)(1). "Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings." Waukon Auto Supply v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reins. Co., 431 N.W.2d 783, 785 (Iowa 1988) (citation omitted).

Restitution is governed by chapter 910 of the Iowa Code (1991). In most criminal cases, "the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities[.]" Iowa Code § 910.2 (1991). "Restitution" is defined, in part, as "payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Id. § 910.1(4). "Pecuniary damages" are defined as "all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium." Id. § 910.1(2).

A restitution order must rest on a causal connection between the established criminal act and the injuries to the victim. State v. Starkey, 437 N.W.2d 573, 574 (Iowa 1989). When this is established, the statute allows recovery of "all damages" (with exceptions not involved

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here) which the state can show by a preponderance of the evidence. State v. Holmberg, 449 N.W.2d 376, 377 (Iowa 1989).

Rich argues there was insufficient proof of her involvement in theft in an amount in excess of her admission to justify the court's award of restitution. We disagree.

To determine the appropriate amount of restitution, the court used the difference between the average cash receipts for the business and the actual cash deposited. Rich claims that under State v Holmberg, 449 N.W.2d 376, 377 (Iowa 1989), simply showing a deficit in cash receipts does not demonstrate Rich took the money.

In Holmberg, the defendant was charged with computer theft in the first degree for unauthorized use of the victim's phone lines. Id. Holmberg pled guilty to computer theft in the third degree (more than \$100 but not more than \$500). Id. Holmberg admitted to accessing the computer, but denied accessing anywhere nearly so often as claimed by the victim. Id. The State sought restitution for \$12,000. Id. At the restitution hearing, the company witness presented evidence that all the calls were hacked and originated through Sioux City. Id. at 378. Our supreme court found the evidence did not show Holmberg was Sioux City's only or principal "hacker", and therefore the record only established Holmberg owed restitution to the extent he pled guilty, or \$500. Id.

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We find Holmberg distinguishable. First, in the instant case, Rich was convicted of theft in the first degree (theft of property exceeding \$5000). She had essentially exclusive control of checks and cash received by the veterinary clinic from the time of its institution in 1979 until the time she quit in 1989. The undisputed evidence showed the amount of cash deposits actually made consisted of a tiny fraction of cash deposits actually received. Most of the cash deposits which were made, were during the short period of time the veterinary clinic had substitute bookkeepers. Rich admitted to embezzling money by keeping cash received. We find substantial evidence supports the trial court's finding that she took the missing money.

Rich also claims the percentage of annual cash receipts relied on by the trial court is too high. She introduced evidence that similar businesses have lower average cash receipts. The State determined the average cash receipts by looking at both the actual percentages of cash receipts for time periods after Rich left employment and from examining the business records during the time Rich was employed. We find there is substantial evidence to support the trial court's reliance on the State's figures. We therefore affirm the trial court on the restitution award.

AFFIRMED.