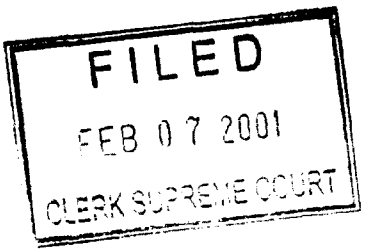
IN THE COURT OF APPEALS OF IOWA

No. 0-798 / 00-22
Filed February 7, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY MARTIN SPROUS,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, David M. Remley (trial and sentencing) and Kristin L. Hibbs (postsentencing order), Judges.

Timothy Sprous appeals the amount of a restitution order entered following his conviction for unauthorized use of a credit card. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

Sprous was charged with this offense based on allegations he fraudulently obtained and used one or more Capital One credit cards issued in Robert Bartholomew's name. The State's case included evidence that the cards were used in forty-two transactions, totaling $6160. Marion police officer Greg Gerber's trial testimony detailed Sprous's admission that "he had been involved in using the Robert Bartholomew credit cards to make purchases." During the same interview, Sprous admitted "he made purchases at Ultimate Electronics Best Buy and that he made a $1400 cash advance at Commercial Federal Bank." Sprous's statements to Gerber also implicated three others in a scheme to obtain and use credit cards in Bartholomew's name.

Gerber additionally testified that a search of Sprous's vehicle produced several credit card receipts. The account numbers on these receipts matched the number of a Capitol One credit card issued in Bartholomew's name listing Sprous as an authorized user. These receipts included transactions at Ultimate Electronics for $1437.93, Best Buy for $503.95, and the University of Iowa Hospital and Clinics gift shop for $13.25. Sprous's use of the credit card in the Ultimate Electronics, Best Buy, and Commercial Federal Bank transactions were corroborated by testimony from other witnesses. The State did not present any additional evidence implicating Sprous in the remainder of the transactions involving the Bartholomew credit cards.

The jury returned a verdict finding Sprous guilty of fraudulent use of a credit card. The jury also answered a special interrogatory finding the goods or services obtained by using Bartholomew's credit cards exceeded $1000.

At sentencing the State filed Capitol One's statement of pecuniary damages totaling $5971.12. The court noted Sprous's objection to the amount of victim restitution claimed and ordered Sprous to file written objections to the amount for consideration at a later proceeding.

The sentencing record also included a sentencing report detailing Sprous's version of the offense. In his version of the offense Sprous stated:

> My version of the offense is that I aided and abetted a person in a credit card fraud. I took the person to the stores, etc. to use the fraudulent credit card and in return I received a car stereo system installed in my car, that was a value of $1400.

Sprous's pleas for leniency were rejected, and he was sentenced to an indeterminate term not to exceed five years. The court also ordered Sprous to pay $5971.12 restitution to Capital One. The court declined to hear Spouse's subsequently filed objections to the amount of restitution citing his intervening appeal of the judgment and sentence.

Sprous appeals, challenging the amount of resistution ordered as excessive.

II. Standard of Review.

We review the district court's sentencing decision for errors of law. *State v. Akers*, 435 N.W.2d 332, 333 (Iowa 1989).

III. The Merits.

Restitution is governed by chapter 910 of the Iowa Code. In most criminal cases where there is a verdict of guilty "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 (1999). Restitution is defined, in pertinent part, as "payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution." Iowa Code § 910.1(4). A victim is defined as "any person who has suffered pecuniary damages as a result of the offender's criminal activities." Iowa Code § 910.1(5). 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." Iowa Code § 910.1(3).

Restitution orders are not limited by the parameters of the offense committed, but may be extended to any damages sustained by the victim of a crime which, with some exceptions, would be recoverable against the offender in a civil action. *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). Consequently, in each instance, the State must prove by a preponderance of the evidence a causal connection exists between the criminal act and the victim's damages. *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989). A trial court abuses its discretion and exceeds its statutory authority when it orders restitution for losses not causally related to the offenses. *State v. Tutor*, 538 N.W.2d 894, 896 (Iowa Ct. App.1995).

Sprous's challenge to the court's restitution order is premised on the State's failure to link him to any credit card transactions other than those referred to in Gerber's testimony. In the absence of such evidence, Sprous argues the State has failed in its burden to establish a causal connection between his criminal conduct and Capitol One's damages resulting from these additional credit card transactions. We disagree.

We apply a two-part proximate cause test in fraud cases: "(1) But for defendant's conduct, plaintiff's injuries would not have occurred; and (2) Defendant's fault must be a substantial factor in bringing about plaintiff's harm." *Robinson v Perpetual Servs. Corp.*, 412 N.W.2d 562, 567 (Iowa 1987) (quoting *Johnson v. Junkmann*, 395 N.W.2d 862, 865 (Iowa 1986)). We find Sprous's admitted use of the Bartholomew cards, participation in a scheme to obtain them, and actions to aid and abet others in the use of the cards are sufficient to satisfy both elements of the foregoing test. Moreover, Sprous's argument ignores well-settled principles of joint and several liability. *See Rozevink v. Faris*, 342 N.W.2d 845, 846-47 (Iowa 1983) (Defendants who act in concert or whose tortuous conduct contributes to causing injury are jointly and severally liable for damages.).

We therefore reject Sprous's claim that the restitution ordered was excessive and affirm the district court's restitution award.

AFFIRMED.