

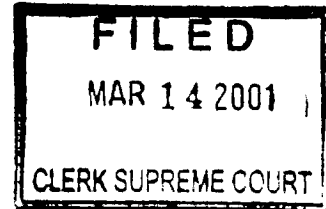
IN THE COURT OF APPEALS OF IOWA

No. 1-21 / 00-436
Filed March 14, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALLAN CLARENCE BRUHN,
Defendant-Appellant.



Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris, District Associate Judge.

Allan Bruhn appeals from the order of restitution entered following his guilty pleas to operating while intoxicated (third offense) and driving while barred.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steve Norby and Danielle Davis, Assistant County Attorneys, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

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STREIT, P.J.

Allan Bruhn appeals from the order of restitution entered following his guilty pleas to operating while intoxicated (OWI) and driving while barred. He claims he should not be required to pay restitution for damages associated with a charge that was dismissed. We affirm.

Allan Bruhn was charged with Count I - OWI, third offense, in violation of Iowa Code section 321J.2 (1999); Count II - driving while license barred, in violation of sections 321.560 and 321.561; and Count III - interference with official acts causing injury, in violation of section 719.1. Bruhn entered into a plea agreement with the State, in which he pled guilty to Counts I and II. The written plea agreement stated, "Count III will be dismissed at defendant's cost."

The district court sentenced Bruhn to a term of imprisonment not to exceed five years on the charge of OWI, and a term of imprisonment not to exceed two years on the charge of driving while license barred, the terms to run concurrently. The order also provided, "The defendant shall make restitution to the victims for costs associated with Count III of this matter." The sentencing order did not include a specific amount of restitution for Count III. Defendant appeals.

Our review of a restitution order is for correction of errors at law. . *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998).

On appeal, Bruhn contends he should not be required to pay restitution for damages arising from the dismissed charge of interference with official acts. He recognizes that as part of the plea agreement he would be required to pay the

costs associated with Count III. He asserts, however, he should not be required to pay victim restitution based on an officer's injuries that were the basis for Count III because the State did not present any evidence to show he committed that crime.¹

Restitution is authorized by Iowa Code chapter 910. It is a mandatory part of sentencing in Iowa. *State v. Mai*, 572 N.W.2d 168, 171 (Iowa Ct. App. 1997). Restitution includes the payment of pecuniary damages to the victim. Iowa Code § 910.1(4). A restitution order must rest on a causal connection between the established criminal act and the injuries to the victim. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995).

Bruhn relies on *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991), where the supreme court determined a defendant who had been charged with three crimes was only responsible to pay restitution on the one crime to which he pled guilty. The court stated:

We hold the provisions of Iowa Code section 815.13 and section 910.2 clearly require, where the plea agreement is silent regarding the payment of fees and costs, that only such fees and costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan.

Petrie, 478 N.W.2d at 622. The court went on to say, "We stress that nothing in this opinion prevents the parties to a plea agreement from making a provision covering the payment of costs and fees." *Id.* In the present case, the plea

¹ Defendant does not argue the term "costs," as used in the plea agreement, does not include victim restitution.

agreement was not silent. The parties clearly agreed Bruhn would be responsible for the costs of Count III.

Bruhn also relies on *State v. Moore*, 500 N.W.2d 75, 76 (Iowa 1993), which dealt with a situation where a defendant was originally charged with three offenses, but pled guilty to one. In *Moore*, the supreme court determined the defendant should be required to pay restitution for costs associated with all three crimes because he did not contest the State's evidence he committed all three crimes. *Moore*, 500 N.W.2d at 76.

In relation to *Moore*, Bruhn claims the State did not present any evidence to show he committed interference with official acts causing injury, and he made no admissions during the plea proceeding concerning this crime. In *Moore*, however, there was no plea agreement. The State voluntarily dismissed two counts in order to conceal the identity of a confidential informant. *Id.* at 75. Therefore, in *Moore* there could not be an agreement, as there was in the present case, defendant would be responsible for the costs of the dismissed offense.

The clear terms of the parties' plea agreement require Bruhn to pay the costs associated with the dismissed charge of interference with official acts causing injury. On appeal, he has not shown adequate reason to overturn the court's order of restitution. We affirm on appeal.

AFFIRMED.