

FILED

JAN 26 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,)

vs.)

JANE SUSAN STOLT,)

Defendant-Appellant.)

8-542
87-1462

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Appeal from the Iowa District Court for Johnson County
(No. 18565), L. Vern Robinson, Judge.

Defendant appeals from a restitution ruling for the
crime of second-degree theft. **AFFIRMED.**

Richard H. Zimmerman of Mears, Zimmerman & Mears, Iowa
City, for defendant-appellant.

Thomas J. Miller, Attorney General; Mark Joel
Zbieroski, Assistant Attorney General; and Jack Dooley,
Assistant Johnson County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and
Schlegel, JJ.

DONIELSON, J.

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Defendant appeals from a restitution ruling entered after she pled guilty to second-degree theft for misappropriating funds from her employer. She contends that the restitution order improperly includes \$2,300 for allegedly-stolen cash when that loss was not included in the trial information, the statement of pecuniary damages, or her guilty plea.

Jane Stolt, a secretary-receptionist for an Iowa City dentist, was charged with second-degree theft for misappropriating funds from her employer. The minutes of testimony attached to the trial information accused Stolt of paying personal debts with office checks, improperly buying personal airline tickets with office accounts, and improper use of the office telephone. In his statement of pecuniary damages, the county attorney listed the total amount of damages at \$3,276. Stolt pleaded guilty to these charges. The district court granted her a deferred judgment and placed her on three years probation conditioned on the payment of full restitution to her employer.

At a subsequent hearing to set the final amount of restitution, the district court entertained testimony concerning Stolt's alleged theft of \$2,300 in cash, a loss not included in the trial information or the statement of pecuniary damages. The district court added the \$2,300 to

its restitution order, making it a total of approximately \$5,260.

Stolt contends the district court improperly ordered restitution of damages which were not included in the trial information and were not among the damages admitted to by the defendant in her guilty plea. She asserts that she did not admit the theft of any cash and that neither the trial information nor the statement of pecuniary damages put her on notice of such an allegation. Stolt argues that Iowa Code section 910.1(3) (1987) provides for restitution of only those damages based on an admission by the defendant or a guilty verdict. We disagree.

The relevant statutes on victim restitution are:

2. "Pecuniary damages" means 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. Without limitation, "pecuniary damages" includes damages for wrongful death.

3. "Criminal activities" means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982 which is admitted or not contested by the offender, whether or not prosecuted. . . .

4. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution shall also include the payment of court costs, court-appointed attorney's fees or the expense of a public defender, . . .

Iowa Code § 910.1 (1987).

910.2 Restitution or community service to be ordered by sentencing court.

In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities and, if the court so orders and to the extent that the offender is reasonably able to do so, for court costs, court-appointed attorney's fees or the expense of a public defender when applicable. However, victims shall be paid in full before restitution is paid for court costs, court-appointed attorney's fees or for the expense of a public defender.

Id. at 910.2.

The sentencing court is "unconditionally" required to order offenders to make restitution to their victims by section 910.2. See State v. Harrison, 351 N.W.2d 526, 528 (Iowa 1984). The court has discretion to order payment of court costs and court-appointed attorney fees to the extent reasonable, but only after the victim has been paid in full. Id. at 529.

The amount of restitution is set by the court. Iowa Code section 910.3 provides:

The court shall require the county attorney to promptly prepare a statement of pecuniary damages to victims of the defendant and shall require the clerk of court to prepare a statement of court-appointed attorney's fees, the expense of a public defender and court costs which shall be promptly provided to the presentence investigator. These statements shall become a part of the presentence report. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. . . . At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service

to be performed as restitution and the persons to whom restitution must be paid. This shall be known as the plan of restitution.

This section does not require that defendant agree to the amount of damages. The defendant may contest the damages all together. The purpose of the hearing is to allow both sides a say in the determination. The statutes combined require that the court be provided with the information of the losses before deciding the amount of damages the victim could recover in a civil action arising out of the same facts. Iowa Code § 910.1(2) (1987). The court then sets the amount due.

Our review of the record indicates that the exact amount of stolen goods from the victim was not determined at the time of filing the trial information or at the time of defendant's guilty plea. The crime charged was second-degree theft, which includes theft of property "exceeding five hundred dollars but not exceeding five thousand dollars in value" Id., § 714.2(2). Due to the disagreement over the amount, the hearing was set up. Prior to the hearing, a copy of the victim's impact statement was delivered to the defendant. This statement indicated the victim was asking for the money that was proven embezzled and approximately \$1,700 that was lost through defendant withdrawing cash. Therefore, we find defendant had adequate notice that an additional amount would be claimed for cash withdrawals.

Furthermore, the court correctly considered the victim's impact statement. In fact, Iowa Code section 910.A5A (1987) requires the court to consider the victim impact statement when determining the amount of restitution. The court also had before it copies of checking account deposit slips which indicated "less" cash amounts. The attached cover letter said the exact amount of cash taken was not available but the letter was to serve as notice to the court that the victim felt more money was due to him than the State could request.

At the hearing, the victim presented a summary of damages which indicated \$2,300 had been taken in cash. Defense counsel was provided with a full opportunity to present defendant's case as well as to challenge the victim's. We find no error was committed by the district court in ordering restitution by defendant in the amount of \$5,259.98. Therefore, the decision is affirmed.

AFFIRMED.