

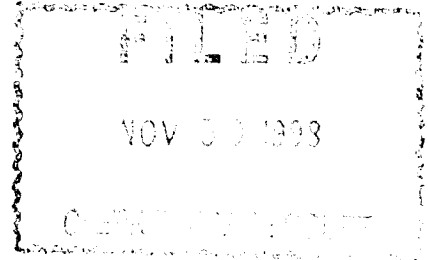
IN THE COURT OF APPEALS OF IOWA

No. 8-479 / 97-1776
Filed November 30, 1998

STATE OF IOWA,
Appellee,

vs.

BETTY JEAN CARLISLE,
Appellant.



Appeal from the Iowa District Court for Hardin County, Timothy J. Finn,
Judge.

On appeal from her conviction for conspiracy to commit arson, defendant
claims the district court erred in ordering her to pay full restitution for arson damages.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, and Richard N. Dunn, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

On appeal from a conviction for conspiracy to commit arson, defendant Betty Jean Carlisle claims the district court erred in ordering her to pay full restitution for arson damages.

Carlisle was charged with second-degree arson and conspiracy to commit arson, in connection with a fire at the home of Roy and Deb Grisham. Carlisle was a good friend of Deb Grisham. Deb Grisham testified Carlisle devised a plan to burn down the home and advised her to purchase house insurance. After the fire, the Grishams received \$96,581.74 from their insurance company, Franklin County Farmers Mutual Insurance. The Grishams paid Carlisle \$5000 from these proceeds.

A jury acquitted Carlisle of arson, but found her guilty of conspiracy to commit arson. The court determined Carlisle was jointly and severally liable with Deb Grisham to make restitution payments totaling \$96,581.74 to the insurance company. Carlisle appeals.

Carlisle asserts she should not be required to pay the full amount of restitution because there was no causal connection between her conviction of conspiracy to commit arson and the damage done to the victim, Franklin County Farmers Mutual Insurance.

The State raises an issue of error preservation. In the present case, Carlisle was sentenced on September 11, 1997. The sentencing order directed Carlisle to make restitution to the victim of the crime. Carlisle filed a notice of appeal on September

17, 1997. On September 18, 1997, the district court entered a supplemental order setting forth the amount of restitution Carlisle should pay. We note section 910.3 specifically allows for supplemental restitution orders. We also note we have previously addressed the issue of restitution before a supplemental order has been entered. *See State v. Mai*, 572 N.W.2d 168, 171 (Iowa App. 1997). We find we may address the issue of restitution in this case.

Our review of a restitution order is on error. *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). We examine the record to determine if there is substantial evidence supporting the district court's decision. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa App. 1995).

Restitution is authorized only by chapter 910 of the Iowa Code. *State v. Wagner*, 484 N.W.2d 212, 215 (Iowa App. 1992).

A restitution order must rest on a causal connection between the established criminal act and the injury to the victim. *Holmberg*, 449 N.W.2d at 377. This causal connection is essentially the tort element of proximate cause. *Wagner*, 484 N.W.2d at 216. It is the burden of the State, not the defendant, to prove the amount of damages causally connected to the criminal act. *State v. Tutor*, 538 N.W.2d 894, 897 (Iowa App. 1995). Once the causal connection is established, the statute allows recovery of all damages which the State can show by a preponderance of the evidence. *Ihde*, 532 N.W.2d at 829.

We could find no Iowa cases which addressed the issue of restitution in a case of criminal conspiracy. However, restitution includes damages sustained by a victim of a crime which, with some exceptions, would be recoverable against the offender in a civil action. *Tutor*, 538 N.W.2d at 896. For civil conspiracy, an agreement must exist between two persons to commit a wrong against another. *Ezzone v. Riccardi*, 525 N.W.2d 388, 398 (Iowa 1994). Civil conspiracy is not in itself actionable; in order for liability to attach there must be an act causing injury, which is actionable, undertaken in furtherance of the conspiracy. *Lindaman v. Bode*, 478 N.W.2d 312, 317 (Iowa App. 1991).

With these principles in mind, we address the facts of the present case. Deb Grisham testified it was Carlisle who first thought of the idea to commit arson in order to collect the insurance proceeds. Grisham testified Carlisle told her to buy house insurance, which she did buy three or four weeks prior to the fire. Grisham's testimony indicated Carlisle proposed to gain entry to the home by breaking the window and unlocking the door, and then start a fire with charcoal fluid from the garage by dousing pieces of furniture with the fluid. The fire marshal confirmed this was how entry was gained and how the fire was started. The court record shows numerous acts taken in furtherance of this conspiracy. We find a sufficient causal connection between the conspiracy and the arson damage to justify the restitution order.

We affirm Carlisle's restitution order. Costs of this appeal are assessed to Carlisle.

AFFIRMED.