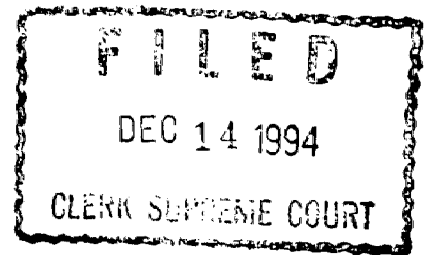


IN THE COURT OF APPEALS OF IOWA

No. 4-424 / 93-1509



STATE OF IOWA,

Appellee,

vs.

GUYON ROBERT ARCHERD,

Appellant.

Appeal from the Iowa District Court for Johnson County,
August F. Honsell, Judge.

Archerd appeals from a restitution order filed
subsequent to his conviction for second-degree theft.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Shari
Barron, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Thomas S. Tauber,
Assistant Attorney General, J. Patrick White, County
Attorney, and David Tiffany, Assistant County Attorney, for
appellee.

Considered by Sackett, P.J., and Habhab and Huitink,
JJ.

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HUITINK, J.

In August 1992 Guyon Archerd was charged with theft in the first degree, in violation of Iowa Code sections 714.1(2) and 714.2(1) (1991). The trial information alleged he had taken band equipment which belonged to others, removed it from Iowa City, Iowa, and disposed of it without the owner's knowledge or consent, the aggregate value of the property being approximately \$12,100.

The minutes of testimony indicate Archerd was in a band with Kevin Kelly and Dewayne Coblentz. Kelly owned most of the guitars and other band equipment. The equipment was stored at defendant's residence in Iowa City. On January 30, 1992, defendant, his girlfriend, and Coblentz left the State of Iowa. Coblentz observed defendant had loaded the bed of his pickup truck with musical and electronic band equipment which belonged to Kelly. Defendant took the loaded pickup when he left the State. Kelly never received back any of the equipment which he had stored at defendant's residence. The minutes state the missing band equipment was worth about \$9770.

Defendant entered into a plea agreement with the State. He agreed to plead guilty to theft in the second degree and the State agreed to recommend a suspended sentence. At the plea hearing, defendant stated the value of the property he had taken was around \$1000. Defendant was sentenced to a term of imprisonment not to exceed five years; however, that term was suspended, and he was placed

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on probation. As a condition of probation, defendant was ordered to make restitution to Kelly for the monetary loss in this case.

In July 1993 the State sought to amend defendant's sentence to reflect victim restitution in the amount of \$11,008.40 and submitted a list of twenty-three items which Kelly claimed had been taken. Defendant objected to the amount of restitution and requested a hearing. At the hearing, defendant admitted he took two of Kelly's guitars when he left the State. He stated before they left he pawned a reel-to-reel tape deck and a four-track tape recorder which belonged to Kelly. He claimed the value of the items he stole was about \$3359.

Defendant's girlfriend, Kay Garringer, testified the only items they took with them were Kelly's two guitars and a guitar amplifier which belonged to defendant.

Kelly testified he had records of his equipment and after defendant left the State he found twenty-two items which were missing. He admitted one item had been included twice on the list. He also admitted he was claiming a loss of \$1199 for the tape recorder, but had actually purchased it at a garage sale for \$25. He stated one item was listed at \$199 which should have been listed for \$100. With these adjustments, Kelly was seeking restitution of \$9436.40.

The district court ordered defendant to pay restitution of \$9436.40. Defendant appeals.

We review the district court's restitution order for errors of law. State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991).

Under Iowa Code section 910.2, a sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities. Restitution includes payment of pecuniary damages to a crime victim. Iowa Code § 910.1(3). "Pecuniary damages" are defined in section 910.1(2) 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.

A restitution order must rest on a causal connection between the established criminal act and the injuries to the victim. State v. Holmberg, 449 N.W.2d 376, 377 (Iowa 1989). When this is established, the statute allows recovery of all damages which the State can show by a preponderance of the evidence. Id. A restitution order is not excessive if it bears a reasonable relationship to the damage caused. State v. Mayberry, 415 N.W.2d 644, 647 (Iowa 1987). A restitution order need not be limited to the parameters of the guilty plea. Earnest v. State, 508 N.W.2d 630, 633 (Iowa 1993).

We find there is sufficient evidence to support the restitution order. When he entered his guilty plea, defendant admitted the minutes of testimony were basically

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correct. In the minutes, Coblantz stated he saw defendant had loaded the bed of his pickup truck with musical and electronic equipment which belonged to Kelly. Also, Kelly stated his records showed twenty-two items were missing at the time defendant absconded from the State. We find this is sufficient evidence to show defendant stole all of the items for which the court ordered restitution.

While defendant only admitted to stealing four items, the court was not required to believe his testimony. The trial court, as the finder of fact, must weigh the evidence and determine the credibility of the witnesses. State v. Frake, 450 N.W.2d 817, 818 (Iowa 1990).

Defendant also claims the State improperly valued some items at their replacement cost instead of their value at the time of the loss. Defendant failed to object to the State's method of valuation at the time of the hearing, and we determine he has failed to preserve error on this issue. See State v. Wagner, 484 N.W.2d 212, 217 (Iowa App. 1992).

We affirm the decision of the district court requiring defendant to pay restitution in the amount of \$9436.40. Costs of this appeal are assessed to defendant.

AFFIRMED.