

NOT DESIGNATED FOR PUBLICATION

No. 125,766

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

GEOFFREY SAMUEL DEARMORE,
Appellant.

MEMORANDUM OPINION

Appeal from Ness District Court; BRUCE T. GATTERMAN, judge. Submitted without oral argument. Opinion filed December 22, 2023. Vacated and case remanded with directions.

Kai Tate Mann, of Kansas Appellate Defender Office, for appellant.

Jacob T. Gayer, county attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., MALONE and WARNER, JJ.

WARNER, J.: Geoffrey Dearmore appeals the district court's order requiring him to pay \$24,000 in restitution after he was convicted of theft of an all-terrain vehicle. He argues that this amount was not supported by substantial competent evidence. We agree. We thus vacate the district court's restitution order and remand the case so the district court may determine the appropriate amount of restitution.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2019, Dearmore was called by two of his friends, Frederick McNett and Shayla Richmeier, to help them pull their car from a ditch. In the midst of trying to extricate the car, however, Dearmore's own truck became stuck. The three entrenched friends spotted a farm nearby with a tractor and made a plan to use the tractor to free their vehicles.

Dearmore and McNett walked to the farm, but the two men could not find the keys to the tractor. So, they broke into a shed and found a Kubota side-by-side all-terrain vehicle (ATV). They started the ATV, drove it over to their vehicles, and used it to try to dislodge the vehicles from the ditch. But once again, they were unsuccessful.

Dearmore called another person to pick him up and take him home. Before Dearmore left the fated ditch, McNett handed him a cardboard box that contained trail cameras and memory cards that McNett had taken from the shed.

McNett and Richmeier then drove the ATV away, traveling about seven miles before the engine overheated and died. The two were later arrested after police received reports of a possible burglary in progress at a different shed. At the sheriff's office, McNett and Richmeier told the police officers that Dearmore had been with them when they stole the ATV. When officers went to Dearmore's house, they saw the box with the trail cameras and memory cards burning in a 55-gallon metal drum.

Dearmore was charged with burglary of the farm shed, theft of the trail cameras, and criminal damage to the trail cameras. He ultimately entered into a plea deal, pleading no contest to one count of theft of the ATV and agreeing to pay restitution.

The district court held a sentencing hearing, in part to determine the amount of restitution Dearmore would pay. Dearmore testified that he was responsible for the damage to the trail cameras and the ATV, and he acknowledged the ATV's owner "deserves something" for that damage. But he argued that he was not the only one at the farm so he should not have to pay for all the damage himself.

The ATV's owner testified at the hearing about the extent of the damage to his property. He stated that Dearmore and McNett damaged his farmhouse gate, broke the garage lock, loaded the ATV with miscellaneous tools, and overheated and ruined the ATV's engine. The owner also testified that he incurred expenses for travel time and lost wages for retrieving the ATV from over seven miles away, renting a trailer, and hauling the ATV to a repair shop in Hays. Finally, he claimed that he should be reimbursed mileage for driving from his home to nine different court proceedings.

The owner requested the district court to order \$48,000 in total restitution. Although he appears to have created an itemization of how he arrived at this amount and brought it to the hearing, this itemization was never admitted as evidence and is not part of the record on appeal. Throughout his testimony, the owner only provided a few specific dollar amounts for the damage he incurred—\$5,450 to rebuild the ATV engine, \$3,495 for loss of equipment use when the ATV was being repaired, and \$540 for the trail cameras and memory cards that Dearmore burned. (The other tools that had been removed were ultimately returned.)

The district court ordered that Dearmore pay \$24,000 in restitution—exactly half of what the owner had requested—and ordered that he be jointly and severally liable for that amount along with McNett and Richmeier. Dearmore appeals.

DISCUSSION

Dearmore challenges two aspects of the district court's restitution order. First, he argues the district court erred when it awarded restitution beyond the damage directly related to the ATV, since his plea was limited to theft of the vehicle. Second, he argues that the amount of restitution—\$24,000—was not supported by the evidence submitted at the sentencing hearing.

When a person is found guilty of a crime, K.S.A. 2022 Supp. 21-6604(b)(1) requires a district court to "order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime." Damage or loss is caused by a crime when there is a "causal link" that satisfies "the traditional elements of proximate cause." *State v. Arnett*, 307 Kan. 648, 655, 413 P.3d 787 (2018). Thus, the restitution statute does not require a direct causal connection between the crime and the damage, and restitution may be allowed for some tangential costs linked to the crime. 307 Kan. at 655; see *State v. Alcalá*, 301 Kan. 832, 837-40, 348 P.3d 570 (2015).

When the defendant is convicted of theft under K.S.A. 2018 Supp. 21-5801, as Dearmore was here, the restitution order must take into account, among other losses,

"the cost of repair or replacement of the property that was damaged, the reasonable cost of any loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property." K.S.A. 2018 Supp. 21-6604(b)(1).

In general, district courts have discretion within this framework to award appropriate restitution based on the evidence and the parties' stipulations. See *State v. Hunziker*, 274 Kan. 655, 663-64, 56 P.3d 202 (2002). Appellate courts review the "amount of restitution and the manner in which it is made to the aggrieved party" for

abuse of discretion. *State v. Martin*, 308 Kan. 1343, 1349, 429 P.3d 896 (2018). A judicial action constitutes an abuse of discretion if it is arbitrary, fanciful, or unreasonable or is rooted in a legal or factual error. *State v. Bilbrey*, 317 Kan. 57, 63, 523 P.3d 1078 (2023). The party asserting the district court abused its discretion—here, Dearmore—must show an error occurred. See *State v. Keys*, 315 Kan. 690, 708, 510 P.3d 706 (2022). And appellate courts will affirm the district court's factual findings underlying the causal link between the crime and the victim's loss if substantial competent evidence supports these findings. *Martin*, 308 Kan. at 1349-50.

Dearmore first argues that the district court abused its discretion in determining the appropriate restitution here because its restitution order included losses beyond the damage directly related to the ATV. Dearmore notes that he pleaded guilty to only one count of theft—theft of the ATV—and argues that his restitution should be limited to losses from that crime. Relying on *State v. Eubanks*, 316 Kan. 355, 366, 516 P.3d 116 (2022), Dearmore argues that because he did not agree in his plea deal to pay for losses not caused directly by his crime, the district court erred when it considered other ancillary damages.

This assertion goes nowhere. A defendant must pay restitution for any damage that his crime causes regardless of whether he agrees to do so. When awarding restitution, a district court is only limited by the "traditional elements of proximate cause"—consisting of but-for causation and legal causation. *Arnett*, 307 Kan. at 655. To prove but-for causation, there must be proof that the loss would not have been incurred without the defendant's conduct. 307 Kan. at 655. And to prove legal causation, there must be proof that the loss was a foreseeable consequence of the defendant's actions. 307 Kan. at 655. Put another way, a district court may order a defendant to pay restitution for any damage that has a causal link between it and the crime of conviction.

Here, there was substantial competent evidence presented at the restitution hearing to show that Dearmore's theft of the ATV caused losses beyond the damage to the ATV itself. The proper test is not whether the losses concerned the exact item stolen but rather whether they were caused by Dearmore's actions when he stole the ATV. Thus, the district court was free to consider other damage and losses that Dearmore's actions caused, such as the broken locks, stolen trail cameras, damaged posts and fences, and opportunity costs when the ATV was inoperable.

Dearmore's second argument finds more traction. Dearmore is correct that the evidence presented at the hearing did not support the \$24,000 restitution award. A district court's restitution order must be based on "reliable evidence which yields a defensible restitution figure." *Hunziker*, 274 Kan. at 663. That is, substantial competent evidence must support the "district court's factual findings relating to the causal link between the crime committed and the victim's loss." *State v. King*, 288 Kan. 333, 354-55, 204 P.3d 585 (2009). Substantial competent evidence is legal and relevant evidence that a reasonable person could accept as adequate to support a conclusion. *State v. Smith*, 312 Kan. 876, 887, 482 P.3d 586 (2021). An appellate court will vacate a restitution order when the evidence is not sufficient to support it. *Arnett*, 307 Kan. at 655.

There was not substantial competent evidence to support an award of \$24,000. The ATV's owner testified that Dearmore caused damage to his trail cameras, the garage locks, a post, doors and windows, a fence, and a building that stored the ATV. And he asserted that he lost income from the inoperable ATV and from attending nine court hearings. He also claimed mileage and travel expenses to and from those hearings—in fact, he purported to claim over \$20,000 in losses from attending court hearings in this case. The district court apparently found many of these assertions dubious, as it awarded exactly half the amount the owner originally sought. The court did not explain how it reached this amount.

As we have mentioned, the document that apparently itemized the owner's claimed losses is not part of the record before us. The only specific losses the owner detailed were \$5,450 for the ATV engine, \$3,495 for loss of equipment use, and \$540 for the trail cameras and memory cards. Even if the district court found that the owner had suffered some other damages, such as the expenses incurred when hauling the ATV to Hays to be repaired, these combined losses account for less than half the restitution the district court ordered here.

We find that the district court's restitution is not supported by substantial competent evidence. In light of this deficiency, we cannot sustain the district court's restitution order. Nor do we believe that a second evidentiary hearing is appropriate, as no one has challenged the evidence presented at Dearmore's original sentencing hearing where restitution was imposed. We thus vacate the district court's restitution order in this case and remand with directions to determine the appropriate amount of restitution based on the testimony and evidence previously submitted for the court's consideration.

Vacated and remanded with directions.