

IN THE COURT OF APPEALS OF IOWA

No. 6-491 / 05-1250
Filed July 26, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

AARON JULIAN D'AMICO,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas Russell,
Judge.

Aaron Julian D'Amico appeals from a restitution order entered following
his conviction for stalking. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, J. Patrick White, County Attorney, and Anne Lahey, Assistant County
Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

ZIMMER, J.

Aaron Julian D'Amico appeals from a restitution order entered following his conviction for stalking in violation of Iowa Code sections 708.11(1), 708.11(2), and 708.11(3)(b)(1) (2003). D'Amico contends the district court erred in ordering him to pay restitution for his victim's slashed tires. We affirm the court's restitution order.

I. Background Facts & Proceedings

D'Amico had a relationship with Wendy Gerard for seventeen months. When Gerard broke off the relationship, D'Amico would not accept it had ended. D'Amico began harassing Gerard. As a result, the district court issued a protective order prohibiting D'Amico from having contact with Gerard. D'Amico repeatedly violated the no-contact order. He contacted Gerard at home and on her phone. D'Amico also posed as a Johnson County Sheriff's Deputy in order to contact Gerard at her place of employment and "serve" her with papers at work.

The State filed a trial information charging D'Amico with stalking and impersonating a public official. The information, as later amended, was based on a series of acts committed by the defendant that began on September 10, 2003, and continued through January 22, 2004. Among other things, the minutes of testimony filed with the trial information alleged Gerard's tires had been slashed.

On March 31, 2004, D'Amico pleaded guilty to stalking pursuant to a plea agreement. As part of the agreement, the State agreed to dismiss the charge of impersonating a public official. On May 18, 2004, the district court sentenced D'Amico to an indeterminate term of incarceration not to exceed five years. The court also imposed, but suspended, a \$750 fine. The court ordered the State to

file a statement of pecuniary damages within forty-five days of the sentencing hearing. D'Amico appealed his stalking conviction, but subsequently dismissed the appeal.

The State filed its statement of pecuniary damages on June 7, 2004. The damages listed included \$3696 for Gerard's lost wages and \$1300.08 to replace tires that had been slashed on her vehicles. On June 20, 2005, the State amended the statement of pecuniary damages to include additional lost wages for Gerard and the cost of a prescription. As amended, the statement requested a total of \$5539.39 in victim compensation.

D'Amico requested a hearing on the amount of restitution. Following the hearing, the district court ordered D'Amico to pay \$5539.39 in restitution. D'Amico has appealed from the restitution order.

II. Scope & Standards of Review

We review restitution orders for the correction of errors at law. *State v. Paxton*, 674 N.W.2d 106, 108 (Iowa 2004). The district court's findings of fact have the effect of a special verdict. *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998). When we review a restitution order, we determine whether the district court's findings lack substantial evidentiary support and whether the court properly applied the law. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001).

III. Discussion

D'Amico contends the district court erred in ordering him to pay restitution for the victim's slashed tires because he never admitted to slashing Gerard's tires. He also claims restitution for the slashed tires was not part of his plea agreement with the State.

When a defendant pleads guilty in a criminal case, restitution is mandatory. *Id.* For a district court to order restitution, it must find proximate causation between the defendant's activities and the victim's damages. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995). We will not find a restitution order excessive if it bears a reasonable relationship, as shown by a preponderance of the evidence, to the damages caused by the defendant's acts. *Bonstetter*, 637 N.W.2d at 165-66.

It is undisputed that the tires on two different vehicles belonging to Wendy Gerard were slashed during the time D'Amico was stalking Gerard. In addition, invoices offered at the restitution hearing confirm that Gerard's tires were replaced on two separate occasions within the timeframe of the stalking charge at a total cost of \$1300.08. The issue on appeal is whether the defendant agreed to accept responsibility for the victim's slashed tires as part of his plea agreement.

At the restitution hearing, the State called former Assistant Johnson County Attorney Gwendolyn Jo McCarty as a witness. McCarty prosecuted the case against D'Amico. She testified she participated in negotiating a plea agreement with D'Amico's defense attorney, Michael Mollman, which resulted in D'Amico pleading guilty to the stalking charge.¹ McCarty stated that part of the plea agreement required D'Amico to make restitution on all the damages arising out of his course of conduct as represented in the stalking charge. Although the

¹ Mollman represented D'Amico at his guilty plea and sentencing. Attorney John Robertson represented D'Amico at the restitution hearing.

plea agreement was not reduced to writing, McCarty testified restitution for the tire slashing was included in the plea agreement.²

Assistant Johnson County Attorney Anne Lahey represented the State at the restitution hearing. She informed the court that she spoke with Attorney Mollman the week prior to the restitution hearing, and “he told me that it was his understanding that as part of the plea agreement that Mr. D’Amico would make restitution on any damages as a result of this alleged course of conduct including the slashed tires.” Neither party called Mollman to testify.

At the restitution hearing, D’Amico claimed he never slashed Gerard’s tires.³ He also claimed ignorance of the terms of the plea agreement. D’Amico testified he believed his Alcoholics Anonymous sponsor slashed Gerard’s tires because the sponsor was upset about how she (Gerard) was “manipulating” him (D’Amico).

The district court found McCarty’s testimony “credible and compelling concerning the terms of the plea agreement.” The district court found Gerard was entitled to restitution for all her damages, including the slashed tires. Upon review of the record, we conclude the evidence supports the district court’s findings and conclusions. Therefore, we affirm the restitution order entered by the district court.

AFFIRMED.

² McCarty also testified that a detective set up a video camera at Gerard’s home and captured footage of a figure that appeared to be D’Amico “again doing something with her tires” during the “early morning hours.”

³ D’Amico concedes he went to the victim’s residence without permission and poured a liquid onto her vehicles.