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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1457**

State of Minnesota,
Respondent,

vs.

Jason Paul Hirman,
Appellant.

**Filed November 25, 2019
Reversed
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-13-1031

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

On remand from the supreme court, appellant Jason Paul Hirman argues that the
district court abused its discretion by ordering restitution because there is no evidence that

his conviction for possession of stolen property was the direct cause of the victims' losses. Because the record does not establish that Hirman's conviction offense was the direct cause of the losses, we reverse.

FACTS

Appellant Jason Paul Hirman was convicted of receiving stolen property with a value exceeding \$5,000. The conviction is based on his possession in a storage locker of the main component of a televising system used to inspect sewers. *State v. Hirman*, No. A16-0928, 2017 WL 1833245, at *1 (Minn. App. May 8, 2017), *review denied* (Minn. July 18, 2017). The component was discovered in August 2012 when the contents of the storage locker were sold at auction after K.S., the renter, failed to make rental payments. *Id.* The sewer inspection system, valued at more than \$40,000, had been stolen from a trailer belonging to ABM Equipment and Supply in August 2011. Hirman appealed his conviction and we affirmed. *Id.* at *6.

In January 2018, the district court ordered restitution of \$2,000 to ABM Equipment and \$62,931.51 to United Fire and Casualty Company for the amount it paid to ABM for the loss of the entire sewer inspection system. Hirman challenged the amount of restitution, arguing that the restitution requested did not reflect that he was convicted of possessing only a component of the system. At the restitution hearing, a representative of ABM Equipment testified that, although the main component was recovered, it was damaged and not operable. ABM suffered out-of-pocket losses for deductibles of \$1,000 for the stolen trailer and \$1,000 for the sewer inspection system. The insurance adjuster for United Fire and Casualty Company testified that he sold the recovered component on Craigslist for

\$2,500, after determining that the component was not working. The insurance company paid ABM \$62,931.51 for the entire system, for its lost equipment, and damage to the stolen trailer. The adjuster applied the \$2,500 that the insurance company received in salvage to reduce the restitution the insurance company requested to \$60,431.51.

In its restitution order, the district court concluded that the state proved a minimum loss of \$5,000 based on the jury's verdict that Hirman possessed stolen property exceeding \$5,000. The district court ordered Hirman to pay \$2,000 to ABM for its deductibles for the damaged trailer and for the sewer inspection system and \$3,000 to United Fire and Casualty Company. The district court added that "[a]ny additional loss above the \$5,000 may be considered in another venue."

Hirman appealed. *See State v. Borg*, 834 N.W.2d 194, 198 (Minn. 2013) (indicating that a party may appeal from restitution order entered after sentencing as an appeal from an amended sentence). We concluded that "the district court appropriately awarded restitution related to the stolen inspection system, but abused its discretion in awarding \$1,000 to ABM Equipment for the deductible related to the loss of the trailer." *State v. Hirman*, No. A18-1457, 2019 WL 1983857, at *3 (Minn. App. May 6, 2019), *vacated* (Minn. Aug. 6, 2019) (mem.). As a result, we affirmed the \$4,000 restitution order for the losses related to the damaged sewer inspection system, reversed the \$1,000 insurance deductible for the trailer, and remanded to the district court for issuance of a new restitution order. *Id.*

The supreme court granted Hirman's petition for further review, vacated our decision, and remanded the matter for further proceedings consistent with its decision in

State v. Boettcher, 931 N.W.2d 376 (Minn. 2019). We reinstated the appeal and the parties filed supplemental briefs.

DECISION

“The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). District courts are generally afforded broad discretion to award restitution, but “questions concerning the authority of the district court to order restitution are questions of law subject to de novo review.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). A district court’s factual findings concerning restitution are reviewed for clear error. *Id.*

By statute, a crime victim is entitled to receive restitution “as part of the disposition of a criminal charge.” Minn. Stat. § 611A.04, subd. 1(a) (2018). “Information submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property.” *Id.* In determining the amount of restitution to award, a district court is required to consider:

- (1) the amount of economic loss sustained by the victim as a result of the offense; and
- (2) the income, resources, and obligations of the defendant.

Minn. Stat. § 611A.045, subd. 1(a) (2018). The district court resolves a dispute as to the amount or type of restitution by the preponderance of the evidence, and the state has “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense

and the appropriateness of a particular type of restitution.” Minn. Stat. § 611A.045, subd. 3(a) (2018).

In *Boettcher*, the supreme court held that “a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” 931 N.W.2d at 381 (footnote omitted). The supreme court reaffirmed the direct-result standard it had articulated in *Palubicki*, 727 N.W.2d at 667, and *State v. Riggs*, 865 N.W.2d 679, 686 (Minn. 2015), and overruled authority that had allowed restitution for losses that “merely have a factual relationship” to the crime. *Id.* (quotation omitted).

The state contends that *Boettcher* does not change the outcome of this case because the district court found, and this court “correctly affirmed,” that Hirman’s receipt and possession of the stolen sewer inspection system was the direct cause of the victims’ losses. Hirman, on the other hand, contends that the state did not present any evidence that the losses were a result of his conviction for receiving a component of the stolen inspection system. Hirman further contends that we correctly decided that his conduct was not a direct cause of the losses related to the stolen trailer and asks that we reaffirm our previous ruling directing the district court to vacate the \$1,000 restitution award for the deductible for the trailer.

At the restitution hearing, Hirman argued that the restitution requested for the value of the entire sewer inspection system did not reflect that he was convicted of receiving only a stolen component of the system. Although the district court referenced the direct-cause standard in its restitution order, the district court did not apply that standard. Instead, the

district court concluded that “there is factual support in the record for restitution” based on the jury’s verdict, which “determined a minimum value of the goods stolen to be \$5,000.” In relying on the jury’s verdict, the district court did not consider the amount of economic loss the victims sustained as a result of the conviction offense. *See* Minn. Stat. § 611A.045, subd. 1(a)(1) (providing that district court “shall consider” “the amount of economic loss sustained by the victim as a result of the offense”).

The record also does not establish that the victims’ losses “follow[] naturally from” or “happen as a consequence” of Hirman’s conviction for receiving stolen property. *Boettcher*, 931 N.W.2d at 381 (quotation omitted). The parties appear to agree that there is no evidence in the record that Hirman stole the sewer inspection system, no evidence that he damaged the main component, and no evidence indicating the condition the component was in when he placed it in the storage locker. Moreover, the insurance company sought restitution for the cost of the entire sewer inspection system, but Hirman possessed only the main component, which was recovered, and the record does not include evidence establishing the extent of the damage to the component, other than a statement that it was “not operable.” *See State v. Johnson*, 851 N.W.2d 60, 63, 65 (Minn. 2014) (explaining that restitution should be calculated by actual damage defendant caused to victim’s car and not amount owing on promissory note secured by the car). Applying the direct-cause standard, we conclude that the state did not prove that Hirman’s receipt of the stolen component of the sewer inspection system directly caused the victims’ losses. We therefore reverse the district court’s restitution award in its entirety.

Reversed.