STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1755

State of Minnesota,
Respondent,

vs.

Stephen Charles Iepson,
Appellant.

Filed May 26, 2020
Reversed and remanded
Worke, Judge

Dakota County District Court
File No. 19HA-CR-18-948

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

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

Hillary B. Parsons, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant argues that the district court abused its discretion by ordering restitution. Because a portion of the restitution award was not for loss caused by appellant's underlying conduct, we reverse and remand for the district court to vacate that portion of the award.

FACTS

On February 13, 2018, police received a report that appellant Stephen Charles Iepson had a marijuana-grow operation in the basement of his mother's home. Officers responded to the home and confirmed the existence of the operation. Iepson was charged with fifth-degree controlled-substance crime—sale and fifth-degree controlled-substance crime—possession.

On January 10, 2019, Iepson pleaded guilty to fifth-degree controlled-substance crime—possession and received a stay of adjudication, probation for up to three years, and a fine. The sale count was dismissed. The sentencing order indicated that restitution was reserved.

On February 22, 2019, a representative for Iepson's mother submitted an affidavit for restitution in the amount of $88,421.43 to remodel the basement. Probation agent Brian Pfieffer reduced his recommended restitution amount to $5,777. Iepson challenged restitution, and the district court held a hearing.

Pfieffer testified that $5,777 constituted the loss connected to the underlying criminal conduct. Pfieffer testified that the electrical work had been altered to

accommodate ten grow lights and two reflective heated blankets. Pfieffer used an estimate of loss prepared by Michael Kanaskie, an electrical estimator.

Kanaskie testified that he inspected the basement and the estimate was based on getting "things up to code," or restoring "the operability of the electrical in the basement in a safe manner." Kanaskie testified that he noticed "numerous illegal wires into the [electrical] panel," which he referred to as "double tapped." Kanaskie testified that the wires were double tapped for the purpose of the grow lights. Kanaskie testified that he also observed "illegal wiring and . . . big streetlight ballasts that were bolted to wooden beams" in the room that housed the grow operation. He also noted "numerous disconnected outlets with hanging wires" in the room. Kanaskie testified that the hanging wires were safe and repair was unnecessary unless the area was used as a living space. Because repair was optional, Kanaskie did not include the cost in his estimate, but stated that repair would cost approximately $1,000 to $1,500.

On cross-examination, Kanaskie stated that he did not focus solely on the grow-operation room, and agreed that his estimate included getting "other areas . . . up to code." Kanaskie testified that it would cost $3,094 to replace the main or "original house panel," which was not up to code and "illegal."

Iepson testified that his brother had been living in the basement and did the alterations to establish the grow operation. Iepson testified that his brother asked him to feed his cats and water his marijuana plants after his brother became ill and was in transitional care. Iepson testified that he watered the plants until his brother died on February 2, 2018.

The district court relied on Kanaskie's estimate and testimony in concluding that the economic loss as a result of the offense was $7,270—the amount of the estimate and $1,500 for the optional work. This appeal followed.

D E C I S I O N

Authority to order restitution

Iepson first argues that the district court did not have authority to order restitution, because a crime victim is entitled to restitution if the offender is convicted, and here, Iepson was not convicted because he received a stay of adjudication.

Iepson did not raise this challenge in district court. Generally, this court will not consider issues not raised before the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But this court may choose to address issues raised for the first time on appeal when the interests of justice so require. *State v. Benniefield*, 678 N.W.2d 42, 45 (Minn. 2004).

Iepson urges this court to consider his claim in the interests of justice because the claim "is plainly decisive of the entire controversy on its merits" and "there is no possible advantage or disadvantage to either party in not having had a prior ruling." *See Watson v. United Servs. Auto. Ass'n*, 566 N.W.2d 683, 688 (Minn. 1997). Iepson argues that this court should consider his claim, relying on *In re Welfare of I.N.A.*, 902 N.W.2d 635 (Minn. App. 2017), *review denied* (Minn. Nov. 28, 2017).

In *I.N.A.*, a juvenile was ordered to pay restitution. 902 N.W.2d at 639. The juvenile appealed, arguing that the district court did not have authority to order restitution when the district court did not make a finding of delinquency. *Id.* The juvenile did not raise the

issue in district court. *Id.* This court, relying on *Watson*, addressed the merits of the claim, stating that the issue satisfied the exception to the rule because it was decisive of the controversy, neither party was advantaged or disadvantaged, both parties fully briefed the issue, and there was no factual dispute. *Id.* at 639-40.

The state argues, however, that it would be disadvantaged if we consider the issue because the plea agreement "was made with the understanding that restitution would be a condition of probation." The guilty plea petition does not provide anything regarding restitution and the record does not contain a transcript from the plea hearing. And while the sentencing order indicates that restitution was reserved, this does not establish that restitution was negotiated as part of the plea agreement. As such, a factual dispute exists as to whether restitution was a material term in the plea agreement, and the exception does not apply.

Additionally, even without the existence of the factual dispute, Iepson was aware that restitution was reserved, he challenged restitution, and he had a restitution hearing; thus, he had several opportunities to raise his challenge to the district court's authority to order restitution. *See State v. Anderson*, 507 N.W.2d 245, 247 (Minn. App. 1993) (stating that record suggested that appellant should have been aware that victim might seek restitution, thus, his failure to object earlier constituted a waiver to his challenge on appeal), *review denied* (Minn. Dec. 22, 1993). Accordingly, we decline to address Iepson's claim.

Loss caused by criminal conduct

Iepson argues that the district court abused its discretion by ordering restitution because he did not cause the loss and the award is too inclusive. A district court has broad

discretion to order restitution. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). But 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." *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019); *see State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007) ("The primary purpose of [restitution] is to restore crime victims to the same financial position they were in before the crime.").

Iepson claims that the district court failed to indicate how he caused any of the damage because he testified that it was his brother's operation. But Iepson testified that he took care of the operation in his brother's absence, and he pleaded guilty to controlled-substance possession; thus, even though Iepson believes that only his brother was criminally responsible for the operation, Iepson was involved and his underlying criminal conduct directly caused the loss.

However, there is merit to Iepson's challenge to the amount of the award. Pfieffer testified that the electricity in the basement had been altered for the grow lights and heat blankets. He reiterated on cross-examination that all of the electrical issues in the basement were not connected to the grow operation; only the grow lights and blankets were connected to the operation.

Kanaskie testified about wires that were double tapped for the operation and "illegal wiring and ballasts" in the room where the marijuana was grown. Kanaskie also testified about "numerous disconnected outlets with hanging wires" in the room that held the operation. But Kanaskie's estimate included $3,094 to replace the "original" main service panel to bring it up to code. There was no evidence that the outdated panel was directly

connected to the underlying criminal conduct. Thus, correcting the wires is a cost associated with the loss for the underlying criminal conduct, but the cost of replacing the original electrical panel is not.

We conclude that the district court abused its discretion by determining that Iepson was responsible for $7,270 in restitution because the replacement of the outdated panel is not a loss connected to the underlying criminal conduct. Accordingly, we reverse and remand for the district court to modify the restitution award by vacating the $3,094 that it would cost to replace the panel.

Reversed and remanded.