4-29-2016

State v. Moore Respondent's Brief Dckt. 43481

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43481**
Plaintiff-Respondent,	)	
	)	**Ada Co. Case No.**
v.	)	**CR-2014-17445**
	)	
JIMMY CARLTON MOORE,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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STATEMENT OF THE CASE

Nature Of The Case

Jimmy Carlton Moore appeals from his convictions for felony domestic battery and resisting and obstructing officers. On appeal, Moore challenges the district court's admission of a 911 recording into evidence, and accordingly requests a new trial. He also requests this Court vacate the district court's restitution award.

Statement Of The Facts And Course Of The Proceedings

Moore hit his wife, Patsey Powell, during an argument they had at home on November 29, 2014. (Trial Tr., p. 105, L. 4 – p. 106, L. 11, p. 130, L. 25 – p. 131, L. 4.) Moore testified that it was an accident; according to him, they were in the kitchen, he was exclaiming about a mess their granddaughter made in their home, and he threw his arm up and accidentally hit Ms. Powell. (Trial Tr., p. 362, Ls. 1-8, p. 394, Ls. 1-4.) However, Ms. Powell testified that Moore intentionally punched her in the face on account of a missing laptop. (Trial Tr., p. 105, L. 20 – p. 106, L. 11, p. 107, L. 12 – p. 108, L. 8.) Ms. Powell further testified that after she was punched, she "grabbed [her] cell phone, and [she] dialed 911." (Trial Tr., p. 111, L. 8.) She did so in secret, because she was afraid of Moore, and thought "well, if he's still furious, then, the 911 call, they can hear." (Trial Tr., p. 111, Ls. 3-16, p. 122, Ls. 11-15.) Ms. Powell intentionally "didn't let [Moore] see the phone" or let him know that she had called 911, and she dropped the phone between chair cushions. (Trial Tr., p.112, Ls 7-19.) Police used the ongoing 911

call to locate Moore and Ms. Powell and, when they arrived on scene, arrested Moore. (Trial Tr., p. 152, Ls. 8-12, p. 256, L. 24 – p. 257, L. 15.)

Moore was charged with felony domestic violence and resisting and obstructing officers. (R., pp. 52-53.) Before trial, he objected to the admission of the 911 recording, arguing that playing it for the jury would be unfairly prejudicial. (R., pp. 93-99.) On the morning of trial the district court ruled that the recording was relevant, and not unfairly prejudicial, and thus allowed the state to admit it into evidence. (Trial Tr., p. 2, L. 22 – p. 4, L.7.)

The State played the 911 recording at trial. Because the phone was between chair cushions when the call was made, the majority of what was said is difficult to understand. (Trial Tr., p. 153, Ls. 13-25; Trial State's Exhibit 1.) However, Moore could be heard yelling and swearing at Ms. Powell. (Trial State's Exhibit 1, 0:58-1:01, 6:40-6:49; Trial Tr., p. 156, Ls. 19-23, p. 371, Ls. 6-9.) Moore could also be heard on the recording making repeated statements of "I admit it," and "I did that." (Trial State's Exhibit 1, 1:20-1:27, 1:39, 1:47-1:48, 2:00-2:01.) Ms. Powell testified that when Moore said "I did that," he was admitting to punching her in the face. (Trial Tr., p. 121, Ls. 16-22, p. 129, Ls. 10-19.) Moore gave varied explanations for what the admissions referred to; first, he testified that when he said "I did that," it was in reference to smoking:

> She sat there. She—I was trying to quit smoking and every once in a while, I might have a cigarette. And she had brought that up, and, I said, "Yes; I did that. I admit it. Yes; I did that."

(Trial Tr., p. 372, Ls. 7-13.) However, Moore later explained that he was also admitting to accidentally hitting her:

> Q [from prosecutor]: Did she ever refer to any injuries to her face during that time?
> A: No, not that I'm aware of. I do know that she said, "Well, you hit me, didn't you?" It was an accident. I said, "Yes; I admitted that. Yes; I did that." But I was thinking maybe she was referring to the kitchen incident.

(Tr., p. 373, Ls. 2-8.)

In addition to the 911 recording, the state's evidence included testimony from police, from the 911 operator who took Ms. Powell's call and located her, from paramedics who transported Ms. Powell to St. Alphonsus hospital, and from a treating physician. The emergency room physician testified that he examined Ms. Powell in the St. Alphonsus Emergency Room trauma bay on November 29 and saw the following:

> Well, based upon the location of the injuries that we could see from the external exam, we focused mostly on her face. She had bruising and swelling around the left eye primarily, so we obtained a CAT Scan of her head and her face and her neck which revealed that she had multiple fractures of the face including the orbit and the maxillary sinus.
>
> Q [from the prosecutor]: And so where are the orbit and maxillary sinus?
>
> A: The orbit is the bones that surround the eye, and the maxillary sinus is right beneath the eye. And the zygomatic arches are the—that was also fractured—that's also on the outside of the frontal part of the sinus.

(Trial Tr., p. 238, Ls. 8-21.) When asked whether these three facial fractures are "potentially consistent with somebody being punched in the face," the doctor testified that "[t]hey are." (Trial Tr., p. 238, L. 25 – p. 239, L. 3.)

Moore's case featured a friend who testified on Moore's behalf, but who had not been present during the incident. (Trial Tr., p. 323, L.2 – p. 324, L. 5, p.

337, Ls. 9-17.) Moore himself also testified, and maintained that while he hit his wife, he did not do so intentionally. (Trial Tr., p.362, Ls. 1-8, p. 394, Ls. 1-4.) Both defense witnesses called Ms. Powell's credibility into question, and testified that she was either inconsistent or untrustworthy. (Trial Tr., p. 329, Ls. 7-11, p. 397, Ls. 12-20)

After deliberation, the jury convicted Moore of felony domestic battery and resisting and obstructing officers. (Trial Tr., p. 446, L. 24 – p. 448, L. 5.) Moore pleaded guilty to a persistent violator sentencing enhancement, and was sentenced to twelve years in prison, with four years fixed. (Trial Tr., pp. 450-451; R., pp. 142-143.)

A restitution hearing was held after trial. (09/30/2015 Tr.) In it, the county's restitution coordinator testified that Medicare had reimbursed medical care providers for treating Ms. Powell. (09/30/2015 Tr., p. 15, L. 16 – p. 16, L. 24.) Moore established that not all of the bills in the state's evidence seemed to relate to the injuries; in fact, some of those claims appeared to be for medications for preexisting conditions. (09/30/2015 Tr., p. 17, L. 19 – p. 19, L. 25.) Consequently, the district court allowed most of the claim, but found some of the care was unrelated to the injuries suffered because of the battery, and awarded restitution in a reduced amount of $5,356.30. (09/30/2015 Tr., p. 28, L. 10 – p. 29, L. 10; Appellant's Motion to Augment, pp. 3-8.)

Moore timely appealed. (R., pp. 148-150.)

ISSUES

Moore states the issues on appeal as:

1. Did the district court err when it admitted the 911 recording into evidence as the recording was only minimally relevant, and its prejudicial effect substantially outweighed its probative value?

2. Did the district court abuse its discretion when it ordered Mr. Moore to pay restitution for medical costs in the absence of substantial evidence to support such an award?

(Appellant's brief, p. 5)

The state rephrases the issues as:

1. Has Moore failed to show that the district court abused its discretion in admitting the 911 recording into evidence?

2. Has Moore failed to show that the district court abused its discretion in ordering Moore to pay restitution, and failed to show that the entire award should be vacated?

ARGUMENT

I.
Moore Has Failed To Show That The District Court Abused Its Discretion In Admitting The 911 Recording Into Evidence

A. Introduction

Moore initially attempted to exclude the 911 recording with a motion *in limine*. (R., pp. 93-99.) His motion contended that the recording was unfairly prejudicial, and thus should be excluded pursuant to I.R.E. 403. (R., p. 94.) Moore further argued that because he mentioned a prior incarceration on the recording, that it should be excluded based on I.R.E. 404(b). (R., pp. 94-95.) The state addressed this latter concern, prior to the motion hearing, by redacting Moore's statement about going to prison. (See R., pp. 96-97; 06/03/2015 Tr., p. 4, Ls. 7-9, 17-19.)

Moore's motion *in limine* was heard on June 3, 2015. The district court began by observing that most of the recording was inaudible, but pointed out that "[a]t some point in the early portions of the recording I hear someone who I suppose is Mr. Moore saying 'I admit it. I admit it.'" (06/03/2015 Tr., p. 1, Ls. 1-22.) Moore noted that "the State has gone through and redacted significant amounts regarding issues that I was concerned about"—that is, the 404(b) issues—but Moore maintained that the "I admit it" portion remained objectionable. (06/03/2015 Tr., p. 4, L.14 – p. 5, L. 2.) Moore argued that "we don't hear the questioning" preceding the admission, nor would jurors know "what it's [referring] to"—consequently, Moore argued, that portion of the audio "leads

to confusing the juror, misleading the jury." (06/03/2015 Tr., p. 4, L.23 – p. 5, L. 2.)

The state contended that the audio, including Moore's admissions, was relevant on two grounds: 1) it corroborated the victim's account that she feared Moore and sought help, and accordingly concealed the phone from Moore; and 2) it showed Moore's "demeanor toward the victim on the day and close in time to when these events occurred." (06/03/2015 Tr., p. 2, L. 25 – p. 3, L. 22.) The district court concluded the hearing by instructing the parties to confer and resolve the issue, if possible, and it reserved any ruling until trial. (06/03/2015 Tr., p. 5, L. 23 – p. 6, L. 2.)

The parties were unable to resolve Moore's motion, so the district court revisited the issue on the morning of trial. (Trial Tr., p. 1, L. 22 – p. 4, L. 7.) Moore reiterated his objection to the audio, even as redacted, and argued that it was misleading, and prejudicial. (Trial Tr., p. 1, L. 24 – p. 2, L.14.) The district court prefaced its ruling by stating that "the standard is not whether [the recording] is prejudicial," and reminded Moore that "[t]he question is whether under Rule of Evidence 403, it is unduly prejudicial, and in determining that, it is a discretionary call with the court." (Trial Tr., p. 2, Ls. 15-21.) The district court went on:

> As I understand it, the relevance of the tape even without regard to my ability to discern what's being stated, is that it corroborates, at least in part and at least indirectly, the victim's account of some incident that had such import on her that she tried to make contact with law enforcement by placing the phone in a position where it would record or it would transmit the statements that were being said that she felt was important, trying to get help, trying to report

> the incident, and her state of concern and fear over the defendant and his conduct.
>
> Apparently, in further discussions with the alleged victim, it may be that counsel can lay a foundation for the relevance admissibility of some of the few statements that I could understand, which are statements of an admission by the defendant, and it may be that the alleged victim's able to provide that context.

(Trial Tr., p. 2, L. 22 – p. 3, L. 14.)

The district court accordingly ruled that the redacted recording and its statements were relevant, weighed the factors found in I.R.E. 403, and further ruled that the recording's "probative value is not substantially outweighed" by the danger of unfair prejudice or decision on an improper basis. (Trial Tr., p. 3, Ls. 15-25.) The district court therefore allowed the state to play the redacted recording at trial, which it did. (Trial Tr., p. 3, L. 25 – p. 4, L. 7, p. 153, Ls. 9-25.)

Moore argues on appeal that the district court abused its discretion by allowing the redacted recording and its statements into evidence, because, he claims, "the statements had little relevance, were misleading, and were far more prejudicial than probative." (Appellant's brief, p. 6.) But the district court did not abuse its discretion—it rightly concluded that the recording was relevant on at least two grounds, and correctly found that the recording's probative value was not substantially outweighed by the danger of a decision on an improper basis. As a result, the decision to admit the 911 recording was not an abuse of discretion.

B. Standard Of Review

Whether evidence is relevant is a question of law reviewed de novo. State v. Atkinson, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993) (citations omitted). However, the abuse of discretion standard applies to the district court's determination that the probative value of the evidence is not substantially outweighed by unfair prejudice. State v. Grist, 147 Idaho 49, 51, 205 P.3d 1185, 1187 (2009).

C. The District Court Correctly Determined That The 911 Recording Was Relevant, And Not Unfairly Prejudicial

To analyze whether evidence is admissible under I.R.E. 403, courts must perform a balancing test and ask "whether the danger of unfair prejudice substantially outweighs the probative value of the evidence." Id. Specifically, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." I.R.E. 403. If a piece of evidence's potential for "unfair prejudice" substantially outweighs its probative value, it can be excluded. I.R.E. 403. "Unfair prejudice" is the tendency to suggest a decision on an improper basis. State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010).

Here, the district court first found that the 911 recording is relevant—irrespective of the audio quality—because "it corroborates, at least in part and at least indirectly, the victim's account of some incident that had such import on her

that she tried to make contact with law enforcement by placing the phone in a position where it would record or it would transmit the statements that were being said that she felt was important, trying to get help, trying to report the incident, and her state of concern and fear over the defendant and his conduct." (Trial Tr., p. 2, L. 22 – p. 3, L. 7.) Moreover, the court determined that the audible portions of the audio are also relevant, insofar as they contain "statements of an admission by the defendant, and it may be that the alleged victim's able to provide" proper foundational context. (Trial Tr., p. 3, Ls. 8-14.) The district court proceeded to consider whether playing the recording would be unfairly prejudicial, and concluded that:

> I've considered these things. It seems to me that without making out the words, the tape, the existence of the tape, the reasons for the tape, the recorded statements are relevant, and, weighing the probative value against the danger of unfair prejudice, confusion of the issues or misleading the jury or by considerations of undue delay or waste of time or knew this presentation of accumulative evidence as an exercise of discretion, I have determined that its probative value is not substantially outweighed by any of those dangers. As a consequence, I will allow the state to admit the redacted recording.

(Trial Tr., p. 3, L. 15 – p. 4, L.1.)

Moore argues on appeal that the recording is only "marginally relevant," and that it has "no probative value in addition to being inflammatory." (Appellant's brief, p. 10.) He first claims that many of the statements in the recording are "difficult, if not impossible, to hear," and then goes on to argue that both he and the victim testified at trial; thus, he avers, it was "not necessary to play the entire 911 recording" when its contents were so muddled, and when the victim could testify both as to the defendant's demeanor, and to her fear that day.

(Appellant's brief, pp. 9-10.) Moore also contends it was unfairly prejudicial to play the recording—he notes that "[i]t is clear from the tone of Mr. Moore's voice that he is displeased with Ms. Powell, further, he curses many, many times." (Appellant's brief, p. 10.) Accordingly, he concludes that "[t]he State was clearly trying to inflame the passions of the jury and played the audio to show that Mr. Moore intentionally committed the battery because he dominated the conversation and used an angry tone of voice. Yet, few words could be understood, requiring the jury to speculate as to what was being said." (Appellant's brief, p. 11.)

Moore's argument fails, because the district court correctly concluded that a recording of Moore angrily shouting at his wife, shortly following an alleged incident of domestic violence, is highly relevant, and not unfairly prejudicial. Moore's wife testified that Moore intentionally punched her in the face out of anger, and he testified to the contrary: he assured the jury, "honest to God's truth," that he hit her accidentally, was not yelling, and was not upset. (Trial Tr., p. 360, Ls. 2 – 14, Ls., 23-25, p. 382, L. 19 – p. 383, L. 9, p. 384, L. 17 – p. 385, L. 20, p. 394, Ls. 1-4.)

In light of these competing accounts of what happened, the recording clarifies what Moore pronounced was the "one issue" in this case—whether he hit his wife *intentionally*. (Trial Tr., p. 430, Ls. 19-22.) Evidence of Moore's angry tirade, shortly after he hit Ms. Powell, not only illuminates his state of mind when he hit her, but further tends to greatly disprove Moore's explanation that he was not upset, and only hit her accidentally. The recording belies Moore's story

because it provides candid, contemporaneous evidence that Moore was angry, and yelling, and cursing at Ms. Powell, just after he hit her. By the same token, the 911 recording shows that Ms. Powell correctly described his state of mind. As a result, the recording is only prejudicial to Moore in the appropriate sense: it overwhelmingly supports the state's case, and greatly harms his.

Moreover, it is well-settled that evidence will not be excluded for simply being harmful to a defendant's case; as Moore was reminded at trial, "the standard is not whether [the recording] is prejudicial" to his case, as almost all evidence against him will be. (Trial Tr., p. 2, Ls. 15-21.) Here, just because the recording corroborated Ms. Powell's testimony, and unraveled Moore's, does not make it unfairly prejudicial, or inadmissible. To the contrary, the recording is prejudicial to Moore *because* it is highly probative, and the district court correctly concluded as a matter of discretion that it should not be excluded per I.R.E. 403.

Moore's remaining arguments against admitting the recording are misplaced. He argues that the recording had "no probative value" beyond being inflammatory, but it was highly probative as to Moore's state of mind. It further tended to disprove Moore's story, and tended to corroborate Ms. Powell's credibility.[1] Moore also argues that the recording should have been excluded

[1] Moore's witnesses and trial counsel repeatedly attacked Ms. Powell's credibility, which made the recording relevant on this score as well:

> Q [from defense counsel]: Do you have an opinion of Patsy's ability to be truthful?
> A [from defense witness]: I do.
> Q: And what is it? Is she truthful?
> A: I personally don't think she's truthful at all.

because "few words [of the recording] could be understood, requiring the jury to speculate as to what was being said." (Appellant's brief, p. 11). Or, as Moore's counsel below put it:

> But the other issue here, Your Honor it that it's—the only words that you can make out are from the dispatcher and that phrase, "I admit it. I did it. I did that." And we're left with—we don't hear the questioning or what it's referencing to. So at least to fill in the blank, a situation for any witness that would testify about that and I think it leads to confusing the juror, misleading the jury.

(06/03/2015, Tr. p. 4, L. 20 – p. 5, L. 2.)

This confusion-and-speculation argument fails, for several reasons. First, as Moore admits, "[i]t is clear from the tone of Moore's voice that he is displeased with Ms. Powell, further, he curses many, many times." (Appellant's brief, p. 10.) In other words, despite the audio's quality, it is nevertheless clear that Moore cursed at his wife many times, and "used an angry tone of voice." (Appellant's brief, pp. 10-11.) By definition these relevant, probative facts are clear and not confusing.

Second, the 911 recording tends to prove Ms. Powell's testimony, regardless of the audio's quality. In fact, the recording's low fidelity increases the likelihood that Ms. Powell gave a correct accounting of what happened—as

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(Trial Tr., p. 329, Ls. 7-11.)

> Q: Did it look like she had significant injury at that time?
> A: No; like I said, there was just a mark right here.
> Q: Okay.
> A: And I can show the other photos. I can show you some other things. **Nothing's consistent of what she says that happened that night in any report. Nothing is consistent.**

(Trial Tr., p. 397, Ls. 12-20 (emphasis added).)

Moore points out, "the phone from which the 911 call was placed was stuck between the cushions of a chair." (Appellant's brief, p. 8.) That being the case, the audio quality itself is evidence the phone was exactly where Ms. Powell said it was, which only heightens the recording's relevance—it confirms that Ms. Powell accurately described concealing the phone, which in turn confirms the fearful state of mind that drove her actions.

Lastly, Moore's particular concern that the "I did that" statements are confusing is misguided. Those statements posed no reasonable risk of confusing the jury, or leading to speculation. Ms. Powell testified that Moore was admitting to hitting her, and Moore himself confirmed that it was him saying "Yes; I admitted that. Yes; I did that." (Trial, Tr., p. 371, Ls. 8-9.) Moreover, Moore testified that when he said "Yes; I admitted that. Yes; I did that," that he was admitting to, among other things, "the kitchen incident." (Trial Tr., p. 372, Ls. 7-13, p. 373, Ls. 2-8.) That the jury might have concluded that his statements "I did that" were admissions to hitting the victim based on both the recording and the other evidence did not render the recording unfairly prejudicial.

The 911 recording is categorically relevant because it shows that Moore was angrily shouting and cursing at his wife, and admitting to hitting her, shortly after he hit her. Moore has not shown that admitting this recording at trial was unfairly prejudicial, and the district court's decision to do so was correct.

II.
Moore Fails To Show That The District Court Abused Its Discretion In Ordering Moore To Pay Restitution, And Fails To Show That The Award Should Be Vacated

A. Introduction

Moore contends on appeal that "the restitution order is not based on sufficient evidence." (Appellant's brief, p. 17.) While the restitution award seems to erroneously include charges unrelated to the injuries that Moore inflicted, the vast majority of the award was supported by substantial evidence. Moore has thus failed to show that the district court abused its discretion, such that the entire award should be vacated.

B. Standard Of Review

The decision whether to order restitution and in what amount is committed to the trial court's discretion. State v. Hill, 154 Idaho 206, 211, 296 P.3d 412, 417 (Ct. App. 2013). The trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Straub, 153 Idaho 882, 885, 292 P.3d 273, 276 (2013); State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

In considering whether a trial court has abused its discretion, this Court "conducts a multi-tiered inquiry to determine" whether the trial court (1) "correctly perceived the issue as one of discretion"; (2) "acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it"; and (3) "reached its decision by an exercise of reason." State

v. Weaver, 158 Idaho 167, 169, 345 P.3d 226, 229 (Ct. App. 2014) (citing State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)).

C. Substantial Evidence Supports The District Court's Restitution Award

Idaho Code § 19-5304(2) authorizes a court to "order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim." For purposes of Idaho's restitution statute, a "victim" includes any "person or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct." I.C. § 19-5304(1)(e)(i). "Economic loss" includes, among other things, "the value of property taken, destroyed, broken, or otherwise harmed … and … medical expenses resulting from the criminal conduct." I.C. § 19-5304(1)(a). Accordingly, for such an order "to be appropriate, there must be a causal connection between the conduct for which the defendant is convicted and the injuries suffered by the victim." State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011).

Courts will not disturb a restitution award so long as it is supported by substantial evidence. Id. "Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion." Straub, 153 Idaho at 885, 292 P.3d at 276.

Moore argues that the state did not "establish, by a preponderance of the evidence, that the amount requested was supported by substantial and competent evidence." (Appellant's brief, p. 17.) He claims that the county restitution coordinator, who testified at the hearing, "did not have sufficient knowledge that these expenses were all the result of the criminal conduct."

(Appellant's brief, p. 16.) Moreover, Moore contends that "[t]here was no evidence introduced at the hearing that all of the restitution awarded was the result of the criminal conduct for which Mr. Moore was convicted." (Appellant's brief, p. 16.) In support of this argument, Moore points to bills for three services included in the state's restitution evidence that appear unrelated to Ms. Powell's injuries. (Appellant's brief, p. 16-17.) Based on this example, Moore concludes that the evidence adduced at hearing "actually undercut" the state's restitution claim; therefore, Moore concludes, the district court erred in awarding restitution, and "the restitution award should be vacated" in its entirety. (Appellant's brief, p. 17.)

The restitution award should not be vacated, because the substantial evidence before the district court connected the vast majority of the ultimately allowed claims to Moore's criminal conduct. The county restitution coordinator testified that she contacted the various medical providers that cared for Ms. Powell immediately after the incident. (09/30/2015 Tr., p. 11, L. 18 – p. 12, L. 16.) Upon learning that Medicaid paid those bills, the coordinator then contacted Medicaid, which gave a detailed list of claims it paid, in the form of a "Medicaid ledger." (09/30/2015 Tr., p. 11, Ls.18-25, p. 13, Ls. 1-13, p. 15, L. 16 – p. 16, L. 12.) The coordinator testified that she reviewed those claims, in conjunction with supporting documents provided by St. Alphonsus Medical Center, Gem State Radiology, and the Ada County Paramedics. (09/30/2015 Tr., p. 11, L. 18 – p. 14, L. 8.) She further testified that based on her review of the police reports and other things associated with the case, the state's request for restitution appeared

appropriate, and the claims paid by Medicaid appeared to be related to the case. (09/30/2015 Tr., p. 13, L. 14 – p. 14, L. 8, p. 16, Ls. 13-24.) The district court ultimately concluded that some of those claims were unrelated to the criminal conduct—specifically, claims for Ms. Powell's prior prescriptions—but it simply removed those claims from its final award. (09/30/2015 Tr., p. 28, Ls. 10-18.) All things considered, the district court had ample evidence from which it could conclude that the state satisfied its burden of showing that the restitution related to Moore's criminal conduct.

Moore nevertheless contends that the restitution coordinator lacked "sufficient knowledge" that the claims on the Medicaid ledger were the result of the criminal conduct. This argument fails, because the majority of the restitution evidence plainly stems from this same incident. St. Alphonsus billed Ms. Powell for treatment she received after checking in on November 29, the day of the battery, and staying through the next day. (Restitution State's Exhibit 1, pp. 6-8;[2] PSI, p. 4.)[3] The Medicaid ledger likewise shows that the vast majority of claims allowed by the district court occurred on these dates, and are self-evidently related to the injuries Moore inflicted. Claims 1 through 18[4] show treatment from Gem State Radiology, St. Alphonsus Acute Care, and Idaho Emergency

[2] A motion to augment the record on appeal with Restitution State's Exhibit 1 will filed with this Court.

[3] It is unclear from the district court record as to whether Ms. Powell returned to St. Alphonsus on November 30 for further procedures, or whether she returned on a later date, and claims from November 30 were simply accrued prior to her checking out. (Compare Trial Tr., p. 241, Ls. 14-20, with Trial Tr., p. 141, Ls. 8-14.) In any event, as explained above, all the allowed November 30 claims appear to stem from the criminal conduct in this case.

[4] For ease of reference the claims are referred to numerically, denoting the order in which they appear on pages two and three of the state's restitution exhibit 1.

Physicians, with diagnoses of "inflicted injury," "Fx clsd skl base," and "Fx facial bone"—that is, closed skull and facial bone fractures. (Restitution State's Ex. 1, p. 2.) Claims 20 and 21 are for the Ada County Paramedics, for the night of the incident. (Restitution State's Ex. 1, p. 2.) Claims 23 through 25 are again billed to St. Alphonsus Acute Care, for the day following the incident, for "FX clsd skl base"—closed skull fractures. (Restitution State's Ex. 1, p. 2.) Claims 26 and 28 are for CAT scans, with one "maxillofacial" scan that led to another "Fx facial bone" diagnosis. (Restitution State's Ex. 1, p. 2-3.) Claims 29 and 30 were both emergency room treatments, with the latter again diagnosing "Fx facial bone." (Restitution State's Ex. 1, p. 3.)

In short, Medicaid paid for Ms. Powell being taken by the Ada County Paramedics to St. Alphonsus on the day of the battery, and she was treated there over the course of two days for the exact same injuries inflicted by Moore. By any reasonable reading, these Medicaid claims and the incident are plainly one and the same. The district court was therefore entirely justified in concluding that the state's evidence satisfied its burden of proving that these claims related to Moore's criminal conduct.

Although he did not raise the issue below, and premises his argument on evidence adduced at trial and not the restitution hearing, Moore points out on appeal that three of the claims on the Medicaid ledger appear unrelated to the injuries that Moore inflicted. (Appellant's brief, p. 16-17.) These claims are for bills to Community Health Clinics, Inc., for appointments in which doctors ultimately concluded that Ms. Powell's skull fractures did not cause subsequent

throat or pulmonary issues. (Appellant's brief, p. 17; Trial Tr., p. 119, L. 20 – p. 120, L. 4, p. 141, Ls. 15-22.) The state concedes that these isolated claims, totaling $172.31, appear unrelated to the injuries, and could thus be excised from the total district court award. However, the remainder of the award should not be vacated, because the rest of the allowed claims are directly related to medical treatment of the injuries, and the district court correctly concluded as much. Because Moore fails to show that the district court erred with respect to the remainder of the award, this court should not vacate it.

CONCLUSION

The state respectfully requests this Court affirm the judgment and order of restitution.

DATED this 29th day of April, 2016.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of April, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_/s/ Kale D. Gans_____
KALE D. GANS
Deputy Attorney General

KDG/dd