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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45567
 Plaintiff-Respondent,)
) Bingham County Case No.
 v.) CR-2016-6737
)
 TERRY C. ANDERSON,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

HONORABLE DARREN B. SIMPSON
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Terry C. Anderson, mindful of the district court's credibility determinations, appeals from the district court's order granting restitution for damages he caused when he rear-ended a tow truck while driving under the influence.

Statement Of The Facts And Course Of The Proceedings

On September 4, 2016, Anderson caused a two vehicle collision when he rear-ended a tow truck. (Tr., p.18, L.22 – p.19, L.13; see also 44896 PSI, p.3.) Officers reporting to the scene of the accident observed that Anderson emitted an alcoholic odor, slurred his speech, and had glassy and bloodshot eyes. (44896 PSI, p.3.) Anderson was required to perform field sobriety tests, which he failed, whereupon he was arrested. (Id.) Pursuant to a later guilty plea, the district court entered judgment against Anderson for felony driving under the influence. (44896 R., pp.161-63.)

In its original and second motions for restitution, the state sought restitution for the cost of repairs incurred as a consequence of Anderson rear-ending the tow truck (see 44896 R., pp.131-40); in its third motion, it sought reimbursement for the forensic analysis of Anderson's blood (44896 R., pp.167-69); and in its amended motion, it sought additional restitution for medical expenses (see R., pp.46-71). The district court granted restitution for the repairs to the tow truck and for the forensics, but denied the state's amended motion on timeliness grounds. (R., pp.93-105.) Anderson filed a timely notice of appeal. (R., pp.112-13.)

ISSUE

Anderson states the issue on appeal as:

Whether the district court abused its discretion when it awarded restitution for the repairs to the tow truck.

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Anderson failed to show that the district court abused its discretion by ordering him to pay restitution?

ARGUMENT

Anderson Has Failed To Show That The District Court Abused Its Discretion By Ordering Him To Pay Restitution

A. Introduction

Mindful of the district court's credibility determination, Anderson claims that the district court abused its discretion when it ordered him to pay restitution for damages caused when he rear-ended a tow truck while driving under the influence. (Appellant's brief, pp.4-5.) Application of the correct legal standards to the facts of this case shows no abuse of the district court's discretion.

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).

C. The District Court Properly Ordered Anderson To Pay Restitution For The Damages He Caused When He Rear-Ended A Tow Truck While Driving Under The Influence

Under Idaho Code § 19-5304, a district court may order a convicted defendant to pay restitution to the victims of that defendant's criminal conduct. I.C. § 19-5304(2). Under that statute, a restitution award must be based "upon the preponderance of evidence submitted by the prosecutor, defendant, victim, or presentence investigator." State v. Weaver, 158 Idaho 167, 170, 345 P.3d 226, 229 (Ct. App. 2014); I.C. § 19-5304(6). "Each party shall have the right to present such evidence as may be relevant to the issue of restitution, and the court may consider such hearsay as may be contained in" the evidence submitted. I.C. § 19-5304(6). A restitution

award “will not be disturbed if supported by substantial evidence.” Id. (citations omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion.” Id. (citing Straub, 153 Idaho at 885, 292 P.3d at 276).

In this case, the district court awarded \$3,405.64 in restitution to the victim and \$8,646.45 to the victim’s insurance company for the costs of repairs that were needed after Anderson rear-ended the victim’s tow truck while driving under the influence. (See R., pp.101-03.) Those restitution awards were supported by substantial evidence: During the restitution hearing, the victim testified that Anderson damaged the rams for the boom (the hydraulic powered instrument that is used to actually tow vehicles) on his tow truck when Anderson rear-ended him. (Tr., p.18, L.22 – p.19, L.16.) Though the victim made an insurance claim, repairing the damage to the tow truck (between his deductible of \$1,000.00 and the betterment of \$2,405.64) still cost the victim \$3,405.64 out-of-pocket. (See Tr., p.19, L.17 – p.21, L.11.) His insurance company also paid \$8,646.45 of the necessary repairs to fix the vehicle. (Tr., p.21, Ls.12-19.) All of these figures were confirmed in the vehicle claim estimate that was submitted to the district court as State’s Exhibit 1 (see Tr., p.25, Ls.17-22; Aug., pp.1-3), and the district court found the victim’s testimony to be “clear and credible” (R., p.97).

Thus, the evidence in this case supports the district court’s award of restitution for the cost of repairs to the victim’s tow truck, which were necessary after Anderson rear-ended the tow truck while driving under the influence. Anderson has failed to show that the district court abused its discretion in ordering restitution. The district court’s orders granting restitution to both the victim and his insurance company should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order granting restitution for the damages Anderson caused when he rear-ended the victim's tow truck while driving under the influence.

DATED this 24th day of August, 2018.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 24th day of August, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd