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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46137-2018
Plaintiff-Respondent,)	
)	BONNER COUNTY NO. CR-2017-4855
v.)	
)	
ARTHUR GREYDANUS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

HONORABLE BARBARA A. BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Arthur Greydanus challenges the district court's order for him to pay \$25,000 in restitution to the Crime Victims Compensation Program.

Statement of Facts and Course of Proceedings

In August 2017, the State filed a Criminal Complaint alleging Mr. Greydanus committed the crime of aggravated battery for striking Jimmy Bailey with a stick. (R., pp.20–21.) According to law enforcement's affidavit of probable cause, Mr. Greydanus and his son, Joseph, got into a fight with Mr. Bailey and two other men.¹ (R., pp.17–18.) Mr. Bailey had driven to the Greydanus residence to deliver their mail, and Joseph kicked Mr. Bailey's truck. (R., pp.17–18.) Mr. Bailey confronted Joseph. (R., p.18.) During the ensuing altercation, Mr. Greydanus hit Mr. Bailey in the head with a stick, and then two other men tackled Mr. Greydanus. (R., p.18.) Mr. Bailey held Mr. Greydanus while the two men beat him. (R., p.18.) Joseph then retrieved his gun and fired it into the air. (R., p.18.) Joseph also pointed his gun at one of the men. (R., p.18.) Joseph may have used a knife and a baseball bat during the fight as well. (R., p.18.) The two other men pointed their guns at Joseph. (R., p.18.) Eventually, law enforcement arrived and arrested Mr. Greydanus and Joseph. (R., p.18.) When law enforcement arrived, Mr. Bailey was laying on the ground not moving. (R., p.17.)

Mr. Greydanus waived a preliminary hearing, and the magistrate bound him over to district court. (R., pp.39, 41.) The State filed an Information charging Mr. Greydanus with aggravated battery. (R., pp.42–43.) In January 2018, Mr. Greydanus pled guilty to an amended

¹ These men are all neighbors. (Tr. Vol. I, p.28 (p.16, Ls.2–16).)

charge of misdemeanor battery for causing a head injury to Mr. Bailey. (R., pp.79–80; Tr. Vol. I,² p.9 (p.8, Ls.1–8).)

Later in January, the district court held a sentencing hearing. (*See generally* Tr. Vol. I, pp.17–29 (p.5, L.3–p.17, L.5).) Mr. Bailey made a statement:

. . . I, Jimmy Bailey, [and the two other men] feel that you have paid your time, Arthur, when you did time in Vietnam. We also understand the parental need to protect your son and the training you have had from Nam. Also, the physical and mental control Joseph has over you.

We also feel that if you were by yourself, none of this would have taken place. We would have had conflict but nothing we wouldn't be able to work out. We feel that --

THE COURT: Sir, if you want me to, we can copy that statement and I can read it.

MR. BAILEY: Put it this way. The trauma that both of these guys put me through, they need to get what they have coming. I feel we are being screwed from Joseph getting a misdemeanor battery. He tried to kill me three times.

I was unconscious, and even then he went at me with a knife and a gun and shot at a 14 year old. I now have epilepsy where I'm afraid it's gotten bad. I can't be alone for fear of going into another seizure.

I believe that we feel the plea of misdemeanor on Arthur's case, the misdemeanor battery and full restitution, Court-ordered psych. eval. and five years of counseling, but we do have questions.

Did you feel threatened when I showed up in my truck to deliver mail from the main house?

[DEFENSE COUNSEL]: You can't ask him any questions.

MR. BAILEY: Do you feel that Joseph has mental issues? If so then, why did you try to get him help?

Do you feel that Joseph has the same mental illness that your ex-wife has . . . ?

These guys had done this in California, and an officer stated that he fears for people that they come across. And now look at -- we all -- all four of us have

² There are two transcripts on appeal. The first, cited as Volume I, contains the entry of plea and sentencing hearings. The second, cited as Volume II, contains the restitution hearing.

In Volume I, the transcript pagination starts over at page one for the sentencing hearing. Accordingly, citations to Volume I will refer first to the pagination of the entire document (thirty-one pages in total) and then, in parentheses, the internal pagination of the transcript for that proceeding.

pretty much gone through hell because of them, because they want to take advantage of people.

And Joseph and Art had -- Joseph mainly -- has their weapons back. They have a shotgun, an SKS. The 38 that was taken, they still have weapons. Where they're at, we don't know.

I'd kind of like to have the Court to make a fair and decisive decision on both of them. I wish I could speak more but I can't take this. But as far as Joseph is concerned, I want him to do prison because he's a danger to himself and to others as proven in the police report.

I was only there to deliver their mail, which I thought it was important, from the main house. And Joseph kicked my truck; and that's when it ensued.

And when I saw the weapons, I called for aid. I can't take much more of this until I get a final resolution. I have a \$50,000 bill because of them. I need resolution for this, please, Your Honor.

(Tr. Vol. I, pp.18–20 (p.6, L.12–p.8, L.21 (sic)).) The district court sentenced Mr. Greydanus to 180 days jail with 145 days suspended and credit for 35 days and two years of unsupervised probation. (Tr. Vol. I, p.26 (p.14, Ls.5–10); R., p.86.) The district court left the matter of restitution open. (Tr. Vol. I, pp.28–29 (p.16, L.25–p.17, L.4).)

On June 5, 2018, the district court held a joint restitution hearing in Mr. Greydanus's and Joseph's case. (R., p.92; Tr. Vol. II, p.6, Ls.4–8.) Joseph had pled guilty to assault. (Tr. Vol. II, p.14, Ls.14–15.) A financial recovery officer with the Crime Victims Compensation Program ("CVCP") testified. (Tr. Vol. II, p.9, L.9–p.13, L.22.) She testified that she compiled a payment summary sheet for Mr. Bailey's medical expenses. (*See* Tr. Vol. II, p.10, L.1–p.13, L.15.) The State also admitted the payment summary sheet. (Tr. Vol. II, p.14, Ls.11–12; *see* State's Ex. 1.) Mr. Bailey testified as well. (*See generally* Tr. Vol. II, p.15, L.22–p.30, L.5.) He testified that Arthur hit him in the head with a stick and Joseph hit him in the head with a baseball bat. (Tr. Vol. II, p.16, L.13–p.17, L.2.) He also testified that he has epilepsy and had seizures in the past, but this incident "made it worse." (Tr. Vol. II, p.18, L.24, p.26, L.25–p.27, L.5.) On cross-examination, Mr. Bailey testified that he had a neck and shoulder injury in May 2017 from a rollover accident in a 26-foot box truck. (Tr. Vol. II, p.27, L.12–p.28, L.11.) He also testified that

he was life-flighted on the day after the incident with Mr. Greydanus and Joseph. (Tr. Vol. II, p.28, L.21–p.29, L.2.)

After the presentation of evidence, the State requested \$25,000 in restitution, but deferred to the district court whether Joseph could be liable to pay. (Tr. Vol. II, p.32, L.23–p.33, L.14.)

Mr. Greydanus objected to restitution:

Mr. Greydanus did plead to a misdemeanor battery, Judge. This was a quite a fiasco. It was mostly -- I would characterize it as mutual combat. Everybody was hitting, attacking everybody else, even Mr. Greydanus was injured. He had the ambulance come out and his arm was broken and he did obtain medical expenses also. That's not part of this restitution hearing.

Mr. Bailey indicated that he was not flight-lifted until the next day, Judge. And that gives concern for Mr. Greydanus, that is \$11,047 that he feels is an unnecessary expense that he should not be held accountable for because he was flight-lifted the next day. Anything could have happened between that night and the next day to cause injury or cause him to be life-flighted to Kootenai Medical. He does have a history of seizures most of his life, Judge, and we would ask you to consider not imposing that \$11,047.

And that's what we want to contest the most. We ask that this be joint and several. The victim testified that it was the baseball bat that he was hit in the head with by Mr. Greydanus' son, and Arthur used a stick.

(Tr. Vol. II, p.33, L.17–p.34, L.15.) Joseph argued that he should not be liable to pay because he pled guilty to assault. (Tr. Vol. II, p.34, L.17–p.35, L.10.) The district court ordered Mr. Greydanus to pay \$25,000 in restitution. (*See* Tr. Vol. II, p.35, L.11–p.37, L.10.) The district court did not order Joseph to be jointly and severally liable because Joseph “pled to misdemeanor assault and so . . . I can't find whether or not you touched Mr. Bailey.” (Tr. Vol. II, p.36, Ls.12–14.)

On June 8, 2018, the district court issued an order of restitution for Mr. Greydanus to pay \$25,000 to the CVCP. (R., p.94.) Mr. Greydanus appealed. (R., pp.97–98.)

ISSUE

Did the district court abuse its discretion by ordering Mr. Greydanus to pay \$25,000 in restitution to the CVCP?

ARGUMENT

The District Court Abused Its Discretion By Ordering Mr. Greydanus To Pay \$25,000 In Restitution To The CVCP

A. Introduction

Mr. Greydanus submits the district court failed to apply the correct legal standards and thus abused its discretion by ordering him to pay the full amount of restitution. He argues that the district court should not have ordered him to pay \$11,047.97 in Life Flight expenses because the State failed to establish causation.

B. Standard Of Review

The decision regarding whether to order restitution, and in what amount, is within the district court's discretion and is guided by consideration of the factors set forth in Idaho Code section 19-5304(7). *State v. Richmond*, 137 Idaho 35, 37 (Ct. App. 2002). The issue of causation in restitution cases is a question of fact to be decided by the trial court. *See Cramer v. Slater*, 146 Idaho 868, 875 (2009). The district court's factual findings with regard to restitution will not be disturbed on appeal if supported by substantial evidence. *State v. Lombard*, 149 Idaho 819, 822 (Ct. App. 2010).

State v. Corbus, 150 Idaho 599, 602 (2011). Substantial evidence is "relevant evidence as a reasonable mind might accept to support a conclusion." *State v. Wisdom*, 161 Idaho 916, 919, 393 P.3d 576, 579 (2017) (quoting *State v. Straub*, 153 Idaho 882, 885 (2013)).

"To determine whether the district court abused its discretion, this Court evaluates whether the district court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with relevant legal standards; and (3) reached its decision by an exercise of reason." *Id.*

C. The State Did Not Establish Causation For Mr. Bailey’s Life Flight Medical Expenses

“Idaho Code § 19-5304(2) authorizes the sentencing court to order a defendant to pay restitution for economic loss to the victim of a crime.” *State v. McNeil*, 158 Idaho 280, 283 (Ct. App. 2014). “Victim” means the “directly injured victim,” which in turn means “a person . . . who suffers economic loss or injury as the result of the defendant’s criminal conduct and shall also include the immediate family of a minor” I.C. § 19-5304(1)(e). Economic loss “includes, but is not limited to, . . . direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct” I.C. § 19-5304(1)(a). “Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. . . . [T]he court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.” I.C. § 19-5304(6).

“The restitution statute is not so broad, however, as to authorize compensation for *every* expenditure that a victim may personally deem reasonable or necessary as a response to a crime.” *State v. Card*, 146 Idaho 111, 114 (Ct. App. 2008). The State bears the burden to show “that the expenses were reasonable and necessary to treat injuries caused by defendant’s criminal conduct.” *Id.* at 114–15. “[I]n order for restitution 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.” *Wisdom*, 161 Idaho at 921.

Causation “rests on tort law principles.” *Id.* (citing *State v. Lampien*, 148 Idaho 367, 374 (2009)). “[C]ausation consists of actual cause and true proximate cause.” *Id.* (quoting *Corbus*, 150 Idaho at 602). The inquiry for actual cause “centers factually on whether a particular event

produced a particular consequence.” *Wisdom*, 161 Idaho at 921. There are two tests used to determine actual cause:

“The ‘but for’ test is used in circumstances where there is only one actual cause or where two or more possible causes were not acting concurrently.” *Corbus*, 150 Idaho at 602. However, “where there are multiple independent forces that may have caused or contributed to the harm,” the substantial factor test is used. *Doe v. Sisters of Holy Cross*, 126 Idaho 1036, 1040 (Ct. App. 1995) (citing *Manning v. Twin Falls Clinic & Hosp., Inc.*, 122 Idaho 47, 51 (1992); *Fussell v. St. Clair*, 120 Idaho 591, 595 (1991)). The “substantial factor” test is established if the conduct was a substantial factor in bringing about the injury, even if two or more possible causes may have produced the injury. *Manning*, 122 Idaho at 51; *see also* 57A AM. JUR. 2d *Negligence* § 458 (2017).

Wisdom, 161 Idaho at 921. The State must present actual evidence of causation. Even if causation is “entirely plausible” based on the facts, “[s]peculative argument” is insufficient. *McNeil*, 158 Idaho at 284.

Here, Mr. Greydanus asserts the State failed to establish actual cause for the Life Flight expenses. As argued by his attorney, Mr. Bailey has a history of seizures and epilepsy, so “[a]nything could have happened between that night and the next day to cause injury or cause him to be life-flighted” (Tr. Vol. II, p.34, Ls.5–7.) As such, the State has failed to show Mr. Greydanus’s criminal conduct in hitting Mr. Bailey with a stick caused him to be life-flighted on the day after the injury. The district court therefore did not have substantial and competent evidence and, as a result, did not apply the correct legal standards by ordering Mr. Greydanus to pay \$25,000 in restitution to the CVCP. Mr. Greydanus maintains the district court’s restitution order for the full amount was an abuse of discretion.

CONCLUSION

Mr. Greydanus respectfully requests that this Court vacate the district court's restitution order and remand his case for further proceedings.

DATED this 22nd day of January, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas