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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47554-2019
Plaintiff-Respondent,)	
)	MINIDOKA COUNTY
v.)	NO. CR34-18-4108
)	
JUSTIN EARL CLAYBORN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MINIDOKA**

**HONORABLE JONATHAN BRODY
District Judge**

**ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555**

**JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

Justin Clayborn appeals from the district court's restitution orders. Mindful of the invited error doctrine, he maintains the district court abused its discretion by ordering restitution.

Statement of Facts and Course of Proceedings

In April 2019, Mr. Clayborn pled guilty to eluding a peace officer and the persistent violator sentencing enhancement. (R., pp.65–70 (amended information), 91–92 (court minutes).) According to the presentence investigation report (“PSI”),¹ Mr. Clayborn fled from the police in his truck and eventually stopped once he collided with a police car. (PSI, pp.90–91.) Three police vehicles and a city building were damaged, and one police officer incurred medical damages. (PSI, p.92.) On July 15, 2019, the district court sentenced Mr. Clayborn to ten years, with five years fixed. (R., pp.119–20.) The district court held restitution open for ninety days and set a hearing for October 7, 2019. (R., pp.120, 122.) Also on July 15, the district court entered a judgment of conviction. (R., pp.121–123.)

On October 7, 2019, the district court held a restitution hearing. (R., p.125; *see also* 10/7/19 Tr.) At the hearing, the State requested \$46,843.01 in restitution. (10/7/19 Tr., p.4, Ls.15–18.) Mr. Clayborn stipulated to restitution, indicating that he would later seek reimbursement from his insurance company. (10/7/19 Tr., p.5, Ls.5–10.) The district court instructed the parties to submit their stipulations to the court. (10/7/19 Tr., p.5, Ls.11–13.) Shortly thereafter, the State and Mr. Clayborn filed stipulations for restitution to a police officer, the county, the sheriff's office, and the city. (R., pp.128, 129, 130, 131, 132.) The total amount of restitution in the written stipulations was \$50,343.10. On October 16, 2019, the district court

¹ Citations to the PSI refer to the 193-page electronic document with the confidential exhibits.

entered a restitution order for each stipulation. (R., pp.133–34, 136–37, 139–40, 142–43, 145–46; *see also* R., pp.148–49, 151–52, 154–55, 157–58, 160–61 (amended orders filed November 1, 2019).) On November 4, 2019, Mr. Clayborn filed a pro se notice of appeal. (R., p.163.)

ISSUE

Did the district court abuse its discretion by ordering Mr. Clayborn to pay restitution?

ARGUMENT

The District Court Abused Its Discretion By Ordering Mr. Clayborn To Pay Restitution

Mindful of the invited error doctrine, Mr. Clayborn argues the district court abused its discretion by ordering him to pay over \$50,000 in restitution.

“The decision regarding whether to order restitution, and in what amount, is within the district court’s discretion,’ guided by factors in Idaho Code section 19-5304(7).” *State v. Hurles*, 158 Idaho 569, 573 (2015) (quoting *State v. Corbus*, 150 Idaho 599, 602 (2011)). “To review an alleged abuse of discretion, the Court considers whether the district court: “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

“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 or entity, who suffers economic loss or injury as the result of the defendant's criminal conduct” I.C. § 19-5304(1)(e). Economic loss “includes, but is not limited to, the value of property . . . destroyed, broken, or otherwise harmed, . . . and direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct” I.C. § 19-5304(1)(a) “[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.” *State v. Wisdom*, 161 Idaho 916, 921 (2017). “In addition to the loss directly caused by the crimes of which a defendant is convicted, a defendant may consent to pay restitution for loss caused by ‘crimes which are not

adjudicated or are not before the court.” *Hurles*, 158 Idaho at 573 (citing I.C. § 19-5304(9); *State v. Nienburg*, 153 Idaho 491, 495–96 (Ct. App. 2012)).

“It has long been the law in Idaho that one may not successfully complain of errors one has acquiesced in or invited. Errors consented to, acquiesced in, or invited are not reversible.” *State v. Abdullah*, 158 Idaho 386, 420–21 (2015). Here, while mindful of the invited error doctrine, Mr. Clayborn argues the district court abused its discretion by ordering him to pay the full amount of restitution. He submits, despite the stipulation, the district court should have ordered a lesser amount because Mr. Clayborn’s insurance company denied his claim, but “should have paid a number of parties,” and Mr. Clayborn will have to file “suit against the insurance company” for reimbursement. (10/7/19 Tr., p.3, Ls.19–20, p.5, Ls.5–10.) For this reason, Mr. Clayborn maintains the district court did not exercise reason and thus abused its discretion by ordering restitution.

CONCLUSION

Mr. Clayborn respectfully requests this Court reverse or vacate the district court’s restitution orders and remand this case for further proceedings.

DATED this 29th day of April, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JCS/eas