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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48023-2020
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR01-17-9547
v.)	
)	
JESSE DON ADAMS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

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

HONORABLE MICHAEL REARDON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jesse Adams was the co-owner of Idaho Interior Services, LLC (*hereinafter* I.I.S.), a painting company located in the Boise area. The State charged Mr. Adams with two counts of grand theft, naming I.I.S. as the victim. In Count I, the State alleged Mr. Adams stole cash from I.I.S. by cashing checks written to I.I.S., and taking the money for himself. In Count II, the State alleged Mr. Adams stole credit, services, and merchandise from I.I.S., by making unauthorized charges on a company debit card. At his trial, Mr. Adams did not dispute that he used the debit card to charge business-related expenses, but he asserted that as a co-owner of I.I.S., he did not need anyone's permission to do so. The jury found Mr. Adams guilty of grand theft as alleged in Count I, but found him not guilty of grand theft as alleged in Count II, and instead found him guilty of the lesser included offense of petit theft.

Relying upon the same evidence it presented to the jury, the State sought \$15,053.49 in restitution related to Mr. Adams' use of the company credit card. Mr. Adams objected to the State's request for any amount over \$999.99, based upon the fact that the jury acquitted him of grand theft, and found him guilty only of petit theft. The district court overruled Mr. Adams' objection and ordered him to pay the full amount sought by the State related to that charge.

Mr. Adams asserts the district court abused its discretion by acting outside the bounds of its lawful authority, by ordering Mr. Adams to pay the full amount of restitution sought by the State related to Count II, because the district court had no lawful authority to order restitution in an amount of \$1,000.00 or greater for that charge, pursuant to I.C. § 19-5304.

Statement of the Facts and Course of Proceedings

The State charged Jessie Adams with two counts of grand theft: Count I alleged that Mr. Adams “did wrongfully take or obtain cash or funds” from I.I.S, in excess of \$1,000.00, over a two-year period; Count II alleged that Mr. Adams “did wrongfully take or obtain credit, merchandise or services” from I.I.S., in excess of \$1,000.00, over roughly that same period. (R., pp.110-11; Tr., p.18, L.1 – p.19, L.5.)¹ During Mr. Adams’ trial, Andy Lyon testified that he and his wife started I.I.S., a painting and refinishing business, in 2007. (Tr., p.159, L.14 – p.160, L.17.)² Towards the end of 2014, Mr. Lyon and his family decided to move to Florida, and he and his wife sold a 10% interest in I.I.S. to their former employee, Mr. Adams, for \$4,000.00; the agreement contemplated that a non-owner third party would act as bookkeeper, while Mr. Adams would run I.I.S. and use profits from the business to pay the Lyons the remaining \$36,000 to complete the sale. (Tr., p.162, L.20 – p.167, L.9.) Mr. Adams started running I.I.S. in January of 2015, although Mr. Lyon continued to field sales calls throughout much of 2015. (Tr., p.167, L.10 – p.168, L.7.)

According to Mr. Lyon, all payments to I.I.S. were to be sent to the bookkeeper, but Mr. Adams would endorse the payroll checks and would use a debit card to make business-related purchases. (Tr., p.175, L.10 – p.177, L.20; p.179, L.4 – p.180, L.25.) Mr. Lyon identified multiple checks, totaling \$10,185.54 written to I.I.S. that were not deposited into

¹ The Amended Information alleged that Mr. Adams committed Count I “on or about the 1st day of January, 2015 and the 31st day of December, 2016,” while Count II alleged the crime occurred “on or about the 1st day of January, 2015 and the 3rd day of November, 2016.” (R., pp.110-11.) The district court granted the State’s oral motion to amend the information to allege the crimes occurred “on or between” those specific dates. (Tr., p.18, L.1 – p.19, L.5.) The Amended Information found in the Clerk’s Record does not reflect this change.

² After page 81, line 22, the transcript omits line numbers. Citations to the line numbers in this brief are estimates based upon the standard, 25-line protocol used in the first 81 pages of the transcript.

I.I.S.'s accounts. (Tr., p.182, L.2 – p.190, L.22.) Mr. Lyon also testified to a series of transactions made using Mr. Adams' debit card that Mr. Lyon believed were not business-related expenses, including payments for Mr. Adams' cell phone bill, rental cars, payments made to businesses located both within Idaho and out of State, and a particularly odd debit purchase of \$26.49 at the Silverwood Theme Park in Athol, Idaho. (Tr., p.190, L.23 – p.212, L.4.) Since I.I.S. was only licensed in Idaho, Mr. Lyon testified that any purchases made out of state would be unauthorized. (Tr., p.194, Ls.10-21.)

Mr. Lyon testified that Mr. Adams' 10% ownership in the company did not allow him to make what he believed were unauthorized purchases, "because the agreement was set forth with [the accountant] – that's why she was the intermediary and receipts needed to be provided for expenditures so that they could be justified." (Tr., p.198, L.19 – p.199, L. 9.) Mr. Lyon testified that he and his wife did not sign a contract with Mr. Adams "because it was going to be an ongoing thing," and that although he believed there was something signed about the "terms of this change-over," neither he nor the accountant had a copy of any written agreement between the Lyons and Mr. Adams. (Tr., p.217, L.16 – p.218, L.15.) Mr. Lyon also testified that there was no written agreement about how the money would be handled: "that was just through the accountant and making the affiliate account and giving the debit card usage with regard to what could or couldn't be spent and the verification through the bookkeeper's office." (Tr., p.220, Ls.8-16.)

Mr. Adams testified that he never signed any kind of partnership agreement with Mr. Lyon, and that he took over running all aspects of I.I.S. when the Lyons moved to Florida. (Tr., p.433, L.6 – p.435, L.22.) According to Mr. Adams, the agreement contemplated that he would use the profits to pay the remainder of the purchase price, and Mr. Lyon would continue

to draw a salary until the transaction was complete. (Tr., p.435, Ls.17-22.) There was no written agreement or policy handbook describing the co-owners' rights and responsibilities in running I.I.S. (Tr., p.435, L.23 – p.436, L.6.) Mr. Adams testified that, as a co-owner, he had full access to the company's bank account and did not need anyone's approval or authorization to make expense purchases. (Tr., p.436, Ls.7-22.)

Mr. Adams testified that things went south when clients failed to pay their bills and I.I.S. was late on paying their own obligations; Mr. Adams insisted that the funds I.I.S. did have should go to the employees first, while Mr. Lyon insisted that business expenses were taken care of first. (Tr., p.437, L.25 – p.439, L.6.) Mr. Adams admitted to cashing the checks in question, but testified that he used the money to pay employees, or that the money was for side-jobs that either he or an employee completed, a gratuity paid by a client for he and his employees, and as repayment for a lift boom rental that Mr. Adams paid for personally, which I.I.S. shared with another company. (Tr., p.439, L.8 – p.444, L.9.)

As for the debit card transactions, Mr. Adams testified that all but one were for business related purposes: I.I.S. paid his cell phone bill just as it paid the Lyons' cell phone bills; the rental cars were necessary because the company car broke down; the out-of-state purchases were related to jobs I.I.S. did out of state; and other purchases were for birthday gifts for employees. (Tr., p.444, L.10 – p.458, L.4.) The only charge Mr. Adams did not recognize was the transaction at the Silverwood Theme Park; he stated that he had never been there. (Tr., p.444, Ls.15-21.)

The jury found Mr. Adams guilty of grand theft in Count I, the charge related to the checks he cashed, but found him not guilty of grand theft in Count II, the charge related to his use of the company debit card, and instead found him guilty of the lesser-included offense of

petit theft. (R., pp.272-73.) On the felony count, the district court sentenced Mr. Adams to a suspended unified term of seven years, with two years fixed, and placed him on probation for a period of 14 years, and sentenced him to 90 days in jail on the misdemeanor count. (R., pp.295-302.)

The State sought a total of \$40,789.32 in restitution, including \$15,053.49³ for the purchases made using the I.I.S. debit card, \$14,450.29 in out-of-pocket expenses paid by Mr. Lyon related his closing I.I.S. down, \$10,185.54 for the stolen checks, and \$1,100.00 for Mr. Lyon's lost wages. (R., pp.318-30.) Mr. Adams objected to the State's restitution request related to the use of the debit card, arguing that the jury's verdict finding him not guilty of grand theft, but guilty of petit theft, precluded the court from ordering restitution in an amount greater than \$999.99 related to that charge. (R., pp.331-33.) He argued that *State v. Richmond*, 137 Idaho 35 (Ct. App. 2002), a case in which the Court of Appeals held the district court did not abuse its discretion when it ordered over \$14,000 in restitution after a jury acquitted the defendant of felony malicious injury to property, but found him guilty of misdemeanor malicious injury to property, did not control the court's decision in Mr. Adams' case. (*Id.*)

The State argued that *Richmond* controlled, and that the district court could order the full amount requested, despite the fact that the jury found Mr. Adams not guilty of grand theft, because the court could order restitution for the actual amount of economic loss suffered by Mr. Adams' criminal conduct. (R., pp.319-26.) The district court agreed with the State, finding

³ In its initial motion for restitution, the State calculated the amounts charged to I.I.S.'s bank account as totaling \$14,038.92. (R., pp.306-11.) In its memorandum in support, the State first claimed asserted that Mr. Adams' use of the debit card totaled \$10,149.92, but then later asserted the amount totaled \$15,053.49. (R., pp.318-26. It is not clear why the State provided three different totals for the restitution it requested related to the petit theft convict, but in any event, Mr. Adams did not dispute the accuracy of the State's ultimate \$15,053.49 request, and instead argued that the district court did not have the legal authority to order restitution in any amount greater than \$999.99 stemming from the petit theft conviction. (Tr. p.583, L.13 – p.584, L.8.)

that it had the power to order Mr. Adams to pay \$15,053.49 in restitution related to the use of the debit card, despite the jury's verdict finding Mr. Adams not guilty of grand theft related to those charges. (R., pp.338-39.) Relying largely upon *Richmond*, the district court held the following:

[T]he Court in its discretion may determine the amount of restitution to be awarded based on a preponderance of the evidence. That amount is not limited by the monetary limits of the crime charge, but shall be limited up to the amount of economic loss suffered by the victim. As Defendant has not presented evidence or argument to dispute any specific amount charged to the Business Bank Account, the Court, having presided over the trial and having reviewed the record, the arguments of the parties, and the testimony given during the restitution hearing, finds that the State has met its burden to show that the victim in this case has suffered an economic loss in the requested amount of \$15,053.49.

(*Id.*) The district court entered an order requiring Mr. Adams to pay I.I.S. a total of \$25,239.03 in restitution, including \$15,053.49 for Mr. Adams' use of the I.I.S. debit card.⁴ (R., pp.342-44.) Mr. Adams filed a notice of appeal timely from the district court's order of restitution. (R., pp.345-47.)

⁴ The court also noted that the State withdrew its request for Mr. Lyon's lost wages, the court rejected the State's request for Mr. Lyon's out-of-pocket expenses related to closing down I.I.S., and Mr. Adams did not contest the State's request for restitution stemming from the stolen checks. (R., pp.336-44.) Mr. Adams does not contest these rulings in this appeal.

ISSUE

Did the district court abuse its discretion by ordering Mr. Adams to pay Idaho Interior Services \$15,053.49 in restitution stemming from his conviction for petit theft?

ARGUMENT

The District Court Abused Its Discretion By Ordering Mr. Adams To Pay \$15,053.49 In Restitution Stemming From His Conviction For Petit Theft

A. Introduction

Mr. Adams asserts that the district court acted outside the bounds of its legal authority when it ordered Mr. Adams to pay \$15,053.39 in restitution, stemming from his conviction for petit theft. Idaho Code § 19-5304 only authorizes a court to order restitution for a crime for which a defendant was found guilty beyond a reasonable doubt, absent a defendant's agreement to pay more. Since the jury found Mr. Adams not guilty of grand theft related to his use of the company debit card, and instead found him guilty of petit theft, the district court had no authority to order restitution in an amount greater than \$999.99 related to that charge. By acting outside the bounds of its legal authority, the district court abused its discretion, and this court should vacate the restitution order and remand the case for further proceedings.

B. A Trial Court Abuses Its Discretion If It Orders Restitution Not Authorized By Statute

A trial court's authority to order restitution is statutory, and a court has no power to order restitution not authorized by the legislature. *See State v. Straub*, 153 Idaho 882 (2013); *State v. Richmond*, 137 Idaho 35, 37 (Ct. App. 2002). "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. Corbus*, 150 Idaho 599, 602 (2011) (citing *Richmond*, 137 Idaho at 37). In reviewing a trial court's discretionary decision, Idaho appellate courts apply a four-part test, asking whether the trial 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, 867 (2018).

Absent consent from the defendant,⁵ the district court’s power to order restitution is limited by the crime for which the defendant was convicted. Idaho Code § 19-5304(7) reads, in relevant part, “The court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a *result of the offense . . .*” I.C. § 19-5304(7) (emphasis added). As recognized by the Supreme Court in *Corbus*, “in 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.” 150 Idaho at 602 (emphasis added). Section 19-5304(1)(b) states, “‘Found guilty of any crime’ shall mean a finding by a court that a defendant has committed a criminal act and shall include an entry of a plea of guilty, an order withholding judgment, suspending sentence, or entry of judgment of conviction for a misdemeanor or felony.” Thus, the district court’s authority to order Mr. Adams to pay restitution was limited to the crimes Mr. Adams was convicted of, not the crimes he was charged with committing.

C. The District Court Abused Its Discretion By Ordering Mr. Adams To Pay More Than \$999.99 In Restitution For His Use Of The Debit Card

The district court’s power to order Mr. Adams to pay restitution as it relates to his use of his I.I.S. debit card, was limited by the jury’s verdict finding Mr. Adams not guilty of grand theft. Mr. Adams does not dispute that he put \$15,053.49 on his I.I.S. debit card. (Tr., p.190, L.23 – p.212, L.4.) He told the jury he used the card to make purchases exceeding \$1,000.00, explaining that as the co-owner of the business, he did not need anyone’s authorization before

⁵ A defendant may agree to pay restitution for uncharged conduct or for charges dismissed through a plea bargain. *State v. Nienburg*, 153 Idaho 491 (Ct. App. 2012).

doing so. (Tr., p.436, Ls.7-22; 444, L.10 – p.458, L.4.) While it impossible to discern exactly how the jurors reached their decision,⁶ the jury clearly found that Mr. Adams did not steal more than \$1,000.00, which is the distinction between grand theft and petit theft under I.C. § 18-2407. (R., pp.260-62 (jury instructions related to Count II); p.273 (verdict for Count II).) Stated another way, the jury unambiguously rejected the State’s claim that Mr. Adams’ theft resulted in \$15,053.49 of economic loss to I.I.S. (*Id.*) By ordering Mr. Adams to pay over \$999.99 in restitution for use of the debit card, the district court abused its discretion by acting outside the bounds of its lawful authority.

To be clear, Mr. Adams does not argue that a district court may never order a defendant convicted of petit theft to pay more than \$999.99 in restitution. It is certainly conceivable, for example, that in addition to losing the amount stolen, restitution may be ordered to the victim of petit theft for wages lost due to attending court hearings, or a defendant may agree to pay additional restitution as part of a plea agreement. I.C. §§ 19-5304(1)(a), (9); *State v. Nienburg*, 153 Idaho 491 (Ct. App. 2012). But in this case, it is undisputed that the \$15,053.49 in restitution ordered by the court reflects the total amount of the charges Mr. Adams put on the debit card. The State argued to the jury that Mr. Adams was guilty of grand theft for those actions, but the jury rejected the State’s claim, finding Mr. Adams guilty of the lesser-included petit theft offense. Thus, the district court’s statutory authority to order Mr. Adams to pay the amount of restitution requested by the State related to his use of debit card, was capped at \$999.99. The district court abused its discretion by ordering more than that amount.

⁶ One reasonable explanation is that the jury found Mr. Adams guilty of petit theft, based upon the \$26.49 charge at the Silverwood Theme Park, which was the only charge Mr. Adams could not explain. (Tr., p.444, Ls.15-21.)

D. The District Court's Reliance Upon *State v. Richmond* Was Misplaced, Because *Richmond* Was Wrongly Decided And Is Not Controlling

The district court erroneously relied upon the Court of Appeals' holding in *Richmond*, because that case was wrongly decided. (R., pp.338-39.) The *Richmond* defendant was charged with felony malicious injury to property, but the jury only found him guilty of the lesser-included misdemeanor offense. *Richmond*, 137 Idaho at 36-37. The Court of Appeals upheld the district court's order requiring the defendant in that case to pay in excess of \$14,000 in restitution, despite the fact that I.C. § 18-7001 sets a \$1,000.00 threshold between felony and a misdemeanor malicious injury to property, similar to the \$1,000.00 threshold set by I.C. § 18-2407 for theft. *Id.* at 37-39. Based upon *Richmond*, the court in Mr. Adams' case reasoned that restitution "is not limited by the monetary limits of the crime charge[d], but shall be limited up to the amount of economic loss suffered by the victim." (R., p.339.) The court's reliance upon *Richmond* was misplaced.

First, as the *Richmond* Court noted, the appellant in that case failed to provide any evidence as to how the district court reached its restitution calculation, and "[i]n the absence of an adequate record on appeal to support the appellant's claims, [Idaho appellate courts] will not presume error." *Id.* at 38 (citing *State v. Beason*, 119 Idaho 103, 105 (Ct. App. 1991). But more importantly, the *Richmond* Court reached its conclusion based upon its perception of the legislature's intent, rather than the plain language contained in the restitution statute: "It is often stated that the policy behind our restitution statute favors full compensation to crime victims who suffer economic loss." *Id.* The Court continued,

we are not persuaded that the legislature intended, when it enacted I.C. § 19-5304, to create exceptions for those crimes that designate monetary amounts in their defining elements, i.e., grand theft, pet[it] theft, and the two grades of malicious injury to property. Rather, the statute clearly intends for full restitution to be ordered on economic loss from one's criminal conduct or criminal act.

Id. at 39.

While the *Richmond* Court’s reliance upon its perception of the legislature’s intent may have been a valid when the case was decided in 2002, that statutory interpretation reasoning has since been roundly rejected by the Idaho Supreme Court, which now recognizes “‘The asserted purpose for enacting the legislation cannot modify its plain meaning.’” *Verska v. State Alphonsus Regional Medical Center*, 151 Idaho 889, 892-93 (2011) (quoting *Viking Constr., Inc. v. Hayden Lake Irr. Dist.*, 149 Idaho 187, 191-92 (2010)). “The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Id.* at 893 (quoting *State v. Schwartz*, 139 Idaho 360, 362 (2003).)

The *Richmond* Court noted the definitions of “economic loss” and “victim” found in I.C. § 19-5304 refer to the defendant’s “criminal conduct,” 137 Idaho at 37, but it failed to acknowledge that the legislature also defined “criminal conduct,” albeit not using that exact language. Section 19-5304(1)(b) states, “‘Found guilty of any crime’ shall mean a finding by a court that a defendant has *committed a criminal act and shall include* an entry of a plea of guilty, an order withholding judgment, suspending sentence, or *entry of judgment of conviction* for a misdemeanor or felony.” (Emphasis added.) Thus, absent an actual finding of guilt, either through a plea or jury verdict, there can be no “criminal conduct” upon which the district court can order restitution. As the *Corbus* Court recognized, “in 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,” 150 Idaho at 602.

State v. Aubert, 119 Idaho 868 (Ct. App. 1991) (overruled on other grounds by *State v. Dorsey*, 126 Idaho 659, 662 (Ct. App. 1995)), a case distinguished by the *Richmond* Court, 137 Idaho at 38, more accurately addresses the limits of the trial court’s authority to order restitution. In *Aubert*, the Court of Appeals vacated a trial court’s order for restitution stemming from a theft case where the district court ordered the defendant to pay restitution for additional uncharged thefts. 119 Idaho at 869. The *Aubert* Court acknowledged the definition of “found guilty of any crime” contained in I.C. § 19-5304, and held, “A reasonable reading of I.C. § 19–5304, coupled with the reasoning expressed in *Hughey* [*v. United States*, 495 U.S. 411 (1990)], shows that a restitution order must be limited to the crime or counts to which a defendant pled guilty or on which he was convicted.” 119 Idaho at 870. While not directly on point considering that Mr. Adams had been charged with, but acquitted of, grand theft, the *Aubert* Court’s recognition that restitution can only be ordered for crimes in which the defendant was convicted, is consistent with the plain language found in I.C. § 19-5304, and the *Richmond* Court erred when it failed to apply that standard. Thus, the district court’s reliance upon *Richmond* was misplaced.

E. The District Court Abused Its Discretion By Ordering Mr. Adams To Pay \$15,053.49 In Restitution Stemming From His Conviction For Petit Theft

The district court ordered Mr. Adams to pay restitution for a crime the jury found he did not commit. Idaho Code § 19-5304 does not authorize the court to do so. For the reasons stated above, by ordering Mr. Adams to pay 15,053.49 in restitution for a crime Mr. Adams was acquitted of, the district court abused its discretion by acting outside the bounds of its lawful authority.

CONCLUSION

Mr. Adams respectfully requests that this Court vacate the district court's restitution order, and remand the case to the district court with instructions that the court order no more than \$999.99 in restitution related to Mr. Adams' conviction for petit theft for his use of the I.I.S debit card.

DATED this 16th day of February, 2021.

/s/ Jason C. Pintler
JASON C. PINTLER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2021, 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

JCP/eas