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### State of Idaho v. Jessie Don Adams Respondent's Brief Dckt. 48023

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 48023-2020  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR01-17-9547  
 )  
 JESSIE DON ADAMS, )  
 )  
 Defendant-Appellant. )  
 )  
 )

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**BRIEF OF RESPONDENT**

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**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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**HONORABLE MICHAEL REARDON  
District Judge**

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## STATEMENT OF THE CASE

### Nature Of The Case

Following his conviction for one count of grand theft and one count of petit theft, Jesse Don Adams appeals the district court's restitution order.

### Statement Of The Facts And Course Of The Proceedings

On or between January 1, 2015 and December 31, 2016, Adams cashed checks written to his employer, Idaho Interior Services, LLC, and took the money for himself. (R., pp. 257, 272; Tr., pp. 582-84<sup>1</sup> (discussing "stolen checks" as the basis for count one).) On or between January 1, 2015, and November 3, 2016, Adams made unauthorized charges to the company bank account, on a company debit card. (R., pp. 262, 273, 338-39.) The state charged Adams with two counts of grand theft arising from this course of conduct. (R., pp. 38-39, 110-11.) Adams pled not guilty. (R., p. 47.) At trial, the jury found Adams guilty of one count of grand theft arising from the cashing of checks to Idaho Interior Services, LLC. (R., p. 272.) The jury acquitted Adams of the second count of grand theft and found him guilty of the lesser-included offense of petit theft for his unauthorized charges to the company bank account. (R., p. 273.)

In the succeeding restitution proceedings, the parties agreed that Adams would pay \$10,185.54 in restitution for the cashing of checks. (R., p. 338.) As to the unauthorized charges to the company bank account, Adams took the position that restitution should be capped at \$999.99 because the debit card transactions gave rise to the petit theft conviction, and restitution should be capped at the offense's dollar amount limit. (See R., pp. 331-33.) The state sought \$15,053.49 for the unauthorized charges. (R., p. 338.)

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<sup>1</sup> The transcript in the record has no line numbers after page 81.

The trial court ordered a total of \$25,239.03, which reflected \$10,185.54 for the stolen checks and \$15,053.49 for the charges to the company bank account. (R., p. 340.) In its restitution order, the trial court addressed the dispute over the amount of restitution appropriate for these charges. (R., pp. 338-39.) The \$15,053.49 of economic loss had been proven by a preponderance of the evidence and therefore could be ordered under the restitution statute, even if the jury did not find the amount proved beyond reasonable doubt for purposes of convicting on the underlying offense. (See id.)

Adams timely appealed. (See R., pp. 342-43, 345-47.) On appeal, he only challenges the \$15,053.49 in restitution arising from the unauthorized debit charges related to the petit theft conviction. (Appellant's brief, p. 6.)

## ISSUE

Adams states the issue on appeal as:

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?

(Appellant's brief, p.7.)

The state rephrases the issue as:

Did the district court appropriately exercise its discretion when it ordered Adams to pay the \$15,053.49 in restitution proven by preponderance of the evidence, as required by the restitution statute?

## ARGUMENT

### The Restitution Order Should Be Affirmed

#### A. Introduction

The district court properly ordered Adams to pay \$15,053.49 in restitution caused by his criminal conduct in relation to his misuse of Idaho Interior Services, LLC's debit card and conviction for petit theft. Adams was found guilty of a crime that resulted in economic loss to Idaho Interior Services, LLC. The court therefore had authority to order restitution under I.C. § 19-5304. The district court appropriately exercised its authority and determined that the economic loss from the criminal conduct, the unauthorized debit card transactions, totaled \$15,053.49. The amount had been proven by a preponderance of the evidence, as required by I.C. § 19-5304(6). The \$15,053.49 of economic loss was causally connected to Adams' criminal conduct, as charged by the state, and was therefore compensable. See State v. Schultz, 148 Idaho 884, 885-87, 231 P.3d 529, 530-32 (Ct. App. 2008). Further, I.C. § 19-5304 does not cap restitution for losses caused by criminal conduct underlying petit theft at \$999 because economic loss for restitution purposes is proven by preponderance of the evidence, while the elements of the offense are proven beyond reasonable doubt. See State v. Richmond, 137 Idaho 35, 37-38, 43 P.3d 794, 796-97 (Ct. App. 2002).

Adams argues that Richmond was decided incorrectly (Appellant's brief, p. 14), but his characterization of the court's opinion is inaccurate. This Court should also reject Adams' contention that State v. Aubert should control (Appellant's brief, p. 16) because Aubert involves uncharged conduct, unlike this case. 119 Idaho 868, 869-71, 811 P.2d 44, 45-46 (Ct. App. 1991) (overruled on other grounds by State v. Dorsey, 126 Idaho 659, 662, 889 P.2d 93, 96 (Ct. App.

1995)). Further, Schultz was decided after Aubert and clearly permits a restitution award for the full economic loss of his crime.

B. Standard Of Review

The decision whether to order restitution, and in what amount, is within the discretion of the trial court, guided by consideration of the factors set forth in I.C. § 19-5304 and the policy favoring full compensation to crime victims who suffer economic loss. State v. Lombard, 149 Idaho 819, 822, 242 P.3d 189, 192 (Ct. App. 2010). When a trial court’s discretionary decision is reviewed on appeal, the appellate court evaluates whether the lower court “(1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of such discretion; (3) acted consistently with any legal standards applicable to the specific choices before it; and (4) reached its decision by an exercise of reason.” State v. Bakke, \_\_\_ Idaho \_\_\_, 481 P.3d 1197, 1201 (Ct. App. 2020).

“The interpretation of a statute is a question of law [the] Court reviews de novo.” State v. Smalley, 164 Idaho 780, 783, 435 P.3d 1100, 1103 (2019). “Statutory provisions should not be read in isolation but instead are interpreted in the context of the entire document.” State v. Thiel, 158 Idaho 103, 106, 343 P.3d 1110, 1113 (2015) (internal quotation marks omitted). Language in an “unambiguous statute must be given its plain, usual, and ordinary meaning.” Id. (internal quotation marks omitted).

C. The District Court Properly Exercised Its Discretion To Order \$15,053.49 In Restitution For The Criminal Conduct Charged In Count II

1. Idaho's Restitution Statute Affords Victims Recovery Of Economic Loss Caused By The Defendant's Criminal Conduct

Idaho Code § 19-5304 gives the courts authority to order certain convicted defendants to pay restitution. See State v. Nienburg, 153 Idaho 491, 495, 283 P.3d 808, 812 (Ct. App. 2012) (citing I.C. § 19-5304).

Generally, when a defendant is “found guilty of any crime which results in an economic loss to the victim,” the court “shall” order the defendant “to make restitution to the victim.” I.C. § 19-5304(2). The district court, however, has discretion to “determine[] that an order of restitution would be inappropriate or undesirable” upon considering the statutory factors. I.C. §§ 19-5304(2), 19-5304(7). These factors are “[1] the amount of economic loss sustained by the victim as a result of the offense, [2] the financial resources, needs and earning ability of the defendant, and [3] such other factors as the court deems appropriate.” I.C. § 19-5304(7). The district court considers the factors to determine whether restitution is appropriate and, if so, what amount is appropriate. Id.

Accordingly, under the plain language of the statute, the threshold inquiry is whether the defendant has been “found guilty of any crime which results in an economic loss to the victim.” I.C. § 19-5304(2). If so, restitution to the victim will generally be appropriate, see id., but the court must consider the statutory factors in making that determination and in calculating any restitution ordered. I.C. § 19-5304(7); see also Thiel, 158 Idaho at 106, 343 P.3d at 1113 (statutory provisions should not be read in isolation and unambiguous language must be given its plain and ordinary meaning).

The Idaho Supreme Court has made clear that causal connection is an element of a proper award of restitution under the statute. State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011). The statutory definition of “victim” includes a person “who suffers economic loss or injury as the result of the defendant’s criminal conduct[.]” I.C. § 19-5304(1)(e)(i). The language “as the result” thus requires a causal connection between the economic loss and “the defendant’s criminal conduct.” See id.; Corbus, 150 Idaho at 602, 249 P.3d at 401 (medical bills of passenger in defendant-driver’s high speed chase were actually and proximately caused by defendant’s criminal conduct); State v. Davis, 156 Idaho 671, 673, 676, 330 P.3d 417, 419, 422 (Ct. App. 2014) (affirming restitution in grand theft case for the full amount of damage to a stolen motorcycle that occurred during or after the defendant’s knowing possession of the motorcycle); State v. Wisdom, 161 Idaho 916, 920, 393 P.3d 576, 580 (2017) (describing applicable tests for actual and proximate cause).

For instance, in State v. Schultz, the court affirmed a restitution award including unauthorized transactions that fit the grand theft theory and time frame of the charging document but for which no evidence was adduced at trial. 148 Idaho at 885-87, 231 P.3d at 530-32. Thus, Schultz demonstrates that the restitution award need not be solely based on transactions proved at trial. See id.

And in State v. Richmond, a case in all salient points like this case, the Court of Appeals held that a victim may recover restitution in the amount proven by a preponderance of the evidence, even when the amount of restitution exceeds the maximum dollar amount defining the offense. See 137 Idaho at 37-38, 43 P.3d at 796-97. The defendant was charged with felony malicious injury to property arising from vandalism of farm equipment and fields. Id. at 36, 43 P.3d at 795. The jury acquitted the defendant of the felony but found the defendant guilty of the

lesser-included misdemeanor malicious injury to property offense. Id. The difference between felony and misdemeanor malicious injury is the amount of damage proven: a felony is \$1,000 or more, and a misdemeanor is less than \$1,000. I.C. § 18-7001(2). After trial, the court considered the evidence of the victim’s losses and ordered \$14,828.54 in restitution. Richmond, 137 Idaho at 38, 43 P.3d at 797. The defendant challenged the amount of restitution ordered by arguing that because the underlying offense was a misdemeanor, restitution should have been capped at \$999.99. Id. at 37, 43 P.3d at 796. The court rejected this argument because the amount of restitution need only be proven by a preponderance of the evidence. Id. It was of no moment that the amount had not been proven beyond a reasonable doubt during the criminal trial. See id. Idaho Code § 19-5304 provides that the restitution proceeding is separate from the criminal trial and has a lower burden of proof. See I.C. § 19-5304(6).

This difference in burdens of proof reflects the purpose of the restitution proceeding—to provide the victim a means of obtaining recompense without having to file a separate civil action. “The policy behind Idaho’s restitution statute favors full compensation to crime victims who suffer economic loss as a result of a defendant’s criminal conduct.” Bakke, \_\_\_ Idaho \_\_\_, 481 P.3d at 1201. A “restitution proceeding is, in essence, a civil proceeding distinct from the criminal case.” State v. Mosqueda, 150 Idaho 830, 834, 252 P.3d 563, 567 (Ct. App. 2011). “The legislature established that economic losses are to be determined by a civil preponderance of the evidence standard so that criminal trial courts are able to resolve issues of restitution, ‘thus freeing the crime victim of the burden of instituting a civil action based on the same conduct, and our court system from unnecessary, repetitive trials.’” Bakke, \_\_\_ Idaho at \_\_\_, 481 P.3d at 1201 (quoting Richmond, 137 Idaho at 38-39, 43 P.3d at 797-98). “In this way, restitution clearly benefits the crime victims by obviating the need to incur the cost and inconvenience of a separate

civil action; however, “[r]estitution orders also operate for the benefit of the state, in part because they promote the rehabilitative and deterrent purposes of the criminal law.” Id. (quoting State v. Card, 146 Idaho 111, 114, 190 P.3d 930, 933 (Ct. App. 2008)).

Here, the district court acted within its statutory discretion. Adams was “found guilty of [a] crime which result[ed] in an economic loss to [Idaho Interior Services, LLC],” I.C. § 19-5304(2), petit theft (R., p. 273). Adams does not dispute that the petit theft resulted “in **an** economic loss.” I.C. § 19-5304(2) (emphasis added). Rather, he disputes how much the economic loss was, or how much he should be responsible to pay. (See Appellant’s brief, p. 11.) Accordingly, unless the district court found it “inappropriate or undesirable,” the court had authority under the plain language of I.C. § 19-5304(2) to order some amount of restitution. The district court set forth the correct standard and determined that restitution was appropriate. (See R., pp. 337-39.) The court found by a preponderance of the evidence that Idaho Interior Services, LLC had lost \$15,053.49 as the result of Adams’ criminal conduct—unauthorized charges to the company bank account. (See R., pp. 338-39.) Adams did not dispute the evidence supporting the \$15,053.49 amount. (R., p. 338.) Like the court in Schultz, the district court ordered restitution in an amount that covered not only the loss from the convicted crime itself, but also the loss from the criminal conduct during the time frame and under the theory included in the charging document—the debit card transactions during the time period January 1, 2015, through November 3, 2016. (R., pp. 111, 260, 322-23, 338-39). The fact that the amount of economic loss proven (\$15,053.49) exceeded the maximum amount defining the offense (\$999) was proper because restitution may be proven by a preponderance of the evidence, while the amount of loss for purposes of the conviction itself must be proven beyond reasonable doubt. See Richmond, 137 Idaho at 37-38, 43 P.3d at 796-97. The restitution order comports with the purpose of the

statute, affording Idaho Interior Services, LLC recovery of its economic losses without the burden of a separate civil case. See Bakke, \_\_\_ Idaho \_\_\_, 481 P.3d at 1201.

2. Other Jurisdictions Have Reached The Same Conclusion As *State v. Richmond*

This Court need look no farther than I.C. § 19-5304 and Idaho case law to affirm the district court's restitution order in this case. But it is worth noting that the Idaho Court of Appeals' decision in Richmond does not stand alone. A number of other jurisdictions with similar criminal restitution statutes have held in similar circumstances that restitution is not capped at the maximum dollar amount defining the offense for which the defendant was convicted. See, e.g., Kuebel v. State, 446 P.3d 179, 188-90 (Wy. 2019) (holding that district court did not abuse its discretion by ordering restitution in an amount greater than \$1,000 when defendant was convicted of misdemeanor theft, which is defined as theft of property valued less than \$1,000); J.O.S. v. State, 689 So. 2d 1061, 1062-65, 1062 n.3 (Fla. 1997) (holding that court could order \$1,092 in restitution even though second-degree misdemeanor criminal mischief, the crime of which defendant was found guilty, involves damage of \$200 or less); State v. Rogers, 638 P.2d 89, 91-92 (Wash. Ct. App. 1981) (while the amount of loss needed to be calculated on remand, the court rejected defendant's argument that the court had "erred in ordering him to pay restitution in an amount greater than \$1,500 because he was convicted of the crime of possessing property having a value of less than \$1,500"); State v. Foltz, 513 P.2d 1208, 1209-10 (Or. Ct. App. 1973) (under a statute allowing the court to condition probation on defendant making "restitution to the aggrieved party for the damage or loss caused by offense," the court could condition probation on payment of restitution for the amount defendant actually took (\$2,600), even if he was convicted of "attempted theft in the second degree (\$120)"); State v. Stuart, 449 P.3d 455, at \*1-3 (Kan. Ct. App. 2019) (unpub.) (affirming \$2,577.56 in restitution arising from

conduct underlying defendant's conviction for "misdemeanor criminal damage to property of an amount less than \$1,000").

3. Adams' Arguments Should Be Rejected

Adams argues that Richmond was wrongly decided because the Court of Appeals bases its decision on a perceived policy behind the restitution statute rather than the statute itself. (Appellant's brief, p. 14.) This is an inaccurate portrayal of the court's opinion. The court in Richmond applied the plain language of the statute. See 137 Idaho at 37, 43 P.3d at 796 (explaining and quoting I.C. § 19-5304). The court referred to the policy behind the restitution statute, but it based its decision on the statute's language that restitution may be proven by a preponderance of the evidence. See id. at 38, 43 P.3d at 797 (agreeing with the district court's reasoning that "the fact that the statute says it can be proven by a preponderance of the evidence as opposed to beyond a reasonable doubt, I think there is a basis to impose restitution in an amount greater than the statutory amount for the crime itself").

Adams also faults Richmond because the opinion purportedly ignores the statutory definition of the phrase "found guilty of any crime." (Appellant's brief, p. 15 (citing I.C. § 19-5304(1)(b).) But as explained in Part C.1., this language does not define the scope of restitution that can be ordered under the statute. Rather, the language is part of the threshold determination that opens the door for the court to order restitution. See supra Part C.1.; I.C. § 19-5304(2) ("Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim."). This threshold question was undisputed in Richmond and therefore did not need to be addressed. Richmond was "found guilty of [a] crime" (misdemeanor malicious injury to property) that resulted "in **an** economic loss." I.C. § 19-

5304(2) (emphasis added); see Richmond, 137 Idaho at 36, 43 P.3d at 795. While Richmond disputed how much he should be responsible to pay, he did not deny that his conduct caused **an** economic loss. See id. at 37, 43 P.3d at 796. The threshold question is likewise undisputed in this case, and the language does not control the outcome of Adams’ appeal: Adams was “found guilty of [a] crime” (petit theft), which resulted “in **an** economic loss.” (I.C. § 19-5304(2) (emphasis added); R., p. 273.) Adams does not dispute that his crime resulted in an economic loss; he only disputes that his crime could, under the language of I.C. § 19-5304, result in a compensable loss of \$1,000 or more. (See Appellant’s brief, p. 11.)

Adams also implicitly argues that Richmond should be distinguished because in that case the appellant had not included record evidence supporting the district court’s calculation of restitution. (See Appellant’s brief, p. 14.) This distinction is irrelevant here. The court in Richmond rejected the appellant’s argument that restitution was capped at \$999 as a matter of law—and needed no record evidence to do so. See 137 Idaho at 38-39, 43 P.3d at 797-98. The record evidence in Richmond would have allowed the court to evaluate Richmond’s challenge that substantial evidence did not exist to support the district court’s restitution order. See id. at 37-38, 43 P.3d at 796-97; Corbus, 150 Idaho at 602, 249 P.3d at 401 (providing that findings of fact with regard to restitution will not be disturbed on appeal if supported by substantial evidence). Here, there is no substantial evidence challenge. (See Appellant’s brief, pp. 12-13.) Accordingly, the fact that the court in Richmond could not review the record has no impact on the legal question raised in this appeal.

Finally, Adams argues that State v. Aubert should control. (Appellant’s brief, p. 16.) In Aubert, the Idaho Court of Appeals held that the district court lacked statutory authority to order restitution for uncharged thefts. 119 Idaho at 869-71, 811 P.2d at 45-46 (overruled on other

grounds by State v. Dorsey, 126 Idaho 659, 662 (Ct. App. 1995)). Aubert is easily distinguishable. The unauthorized debit transactions here were not uncharged thefts; they were the thefts underlying the second count of grand theft in the information. (See Appellant's brief, p. 16.) Further, Schultz, a more recent decision than Aubert, holds that restitution is permitted for transactions that were not proven at trial but fit within the charged acts in the information. See Schultz, 148 Idaho at 885-87, 231 P.3d at 530-32. Aubert has no application here.

### CONCLUSION

The state respectfully requests that this Court affirm the district court's restitution order.

DATED this 7th day of May, 2021.

/s/ Jennifer Jensen  
Jennifer Jensen  
Deputy Attorney General

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of May, 2021, 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/ Jennifer Jensen  
Jennifer Jensen  
Deputy Attorney General

JJ/dd