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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48023-2020
)	
v.)	ADA COUNTY NO. CR01-17-9547
)	
JESSE DON ADAMS,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY 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

The State charged Jesse Adams with two counts of grand theft. In Count II, the State alleged that Mr. Adams stole credit, services, and merchandise from Idaho Interior Services, LLC (*hereinafter* I.I.S.), by making unauthorized charges on a company debit card.¹ 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 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. (App. Br., pp.8-14.) In response, the State argues that the district court was authorized to order \$15,053.49 in restitution related to Count II, despite the fact that the jury acquitted Mr. Adams of grand theft, because Mr. Adams was convicted petit theft, which is "a crime," and the amount of restitution

¹ Mr. Adams does not raise any issues related to his conviction for grand theft as alleged in Count I, or the subsequent restitution order.

may be proven by a preponderance of the evidence, rather than beyond a reasonable doubt. (Resp., Br., pp.4-13.) The State's arguments are without merit.

Statement of the Facts and Course of Proceedings

Mr. Adams articulated the relevant facts and course of proceedings in the Appellant's Brief, and they are repeated herein only where necessary to address the State's arguments.

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

The issue presented in this appeal is fundamentally a question of statutory interpretation, i.e., whether I.C. § 19-5304 grants the district court the authority to order a defendant to pay restitution for alleged criminal conduct for which he was acquitted. Idaho courts have no inherent power to order restitution; instead, a court's authority to order restitution is granted by the legislature. *See State v. Straub*, 153 Idaho 882 (2013); *State v. Richmond*, 137 Idaho 35, 37 (Ct. App. 2002). "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.'" *Verska v. State Alphonsus Regional Medical Center*, 151 Idaho 889, 893 (2011) (quoting *State v. Schwartz*, 139 Idaho 360, 362 (2003).)

A. The State's Statutory Construction Argument Is Contrary To The Plain Language Of Idaho Code § 19-5304

The State argues that I.C. § 19-5304 empowers a trial court to order a defendant to pay restitution for economic loss suffered by a victim, so long as a defendant is convicted of some crime, and there is a causal connection between that crime and the economic loss. (Resp. Br., pp.6-13.) This, of course, is generally true. As the State correctly notes, I.C. § 19-5304(2) allows a court to order "a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim," provided there is a causal connection between the defendant's criminal act and the claimed economic loss, *see State v. Corbus*, 150 Idaho 599 (2011), and the court must consider the factors set forth in I.C. § 19-5304(7), in order to determine the appropriate amount of restitution. (Resp. Br., pp.6-7.) In the State's view,

because Mr. Adams was convicted of a crime – petit theft – the court was empowered to order him to pay restitution for any amount of economic loss the court found, by a preponderance of the evidence, resulted from Mr. Adams’ criminal conduct. (Resp. Br., pp.6-13.) In makes no difference, the State reasons, that the jury acquitted Mr. Adams of grand theft – any crime will do. (*Id.*)

In making this argument, the State ignores the fact that the legislature defined what it meant by the words, “found guilty of any crime,” it used in I.C. § 19-5304(2). (Resp. Br., pp.6-13.) Idaho Code § 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.” I.C. § 19-5304(1)(b) (emphasis added). The Court may order a defendant to pay restitution only for *the* crime the defendant is found guilty of having committed, beyond a reasonable doubt, not the crime the State alleged he committed, but failed to prove beyond a reasonable doubt.

The State’s only mention of I.C. § 19-5304(1)(b) is its claim that that provision “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.” (Resp. Br., p.11.) But by its plain language, I.C. § 19-5304(1)(b) *both* opens the door for the court to order restitution *and* defines the scope of the restitution that may be ordered. Idaho Code § 19-5304(2) allows a district court to “order a defendant *found guilty of any crime* which results in an economic loss to the victim to make restitution to the victim,” and I.C. § 19-5304(1)(b) defines *found guilty of any crime*, in relevant part, to mean those criminal acts reflected in the judgment of conviction. The State’s argument would essentially have this Court read § 19-5304(1)(b) as

stating, “‘Found guilty of any crime’ shall mean a finding by the court that the defendant committed a criminal act,” and then erase the remaining language the legislature sought fit to include in its definition, thereby freeing the trial court to order restitution for any crime it believed the defendant committed, regardless of the jury’s verdict. This Court has no authority to re-write a statute to fit the State’s preferred meaning, and the State’s interpretation of I.C. § 19-5304 is incomplete and erroneous.

B The State Mischaracterizes *Schultz* And Fails To Acknowledge The Opinion Supports Mr. Adams’ Argument

The State relies upon the Court of Appeals’ holding in *State v. Schultz*, 148 Idaho 884 (Ct. App. 2008), in support of its argument. (Resp. Br., pp.4, 7, 13.) In *Schultz*, the State charged the defendant with having committed two counts of grand theft, and four counts of forgery, and she was convicted of all counts. *Id.* at 885. One of the grand theft counts stemmed from the defendant’s unauthorized use of the victim’s credit card, and the Court of Appeals affirmed the district court’s restitution order that included unauthorized transactions that were not introduced into evidence at trial. *Id.* at 885-87. From this, the State reasons that “Schultz demonstrates that the restitution award need not be solely based on transactions proved at trial.” (Resp. Br., p.7.)

But the State fails to mention language in the *Schultz* opinion that is directly contrary to the State’s position on appeal, and which is supportive of Mr. Adams’ argument. The *Schultz* Court recognized that, “Except where the parties have consented, a defendant cannot be required to pay restitution for damages stemming from separate, uncharged and *unproven crimes*. *Schultz*, 148 Idaho at 886 (citing *State v. Shafer*, 144 Idaho 370, 372 (Ct. App. 2007) (emphasis added)). The Court recognized that “Restitution depends on the existence of the crime *for which*

the offender was convicted,” and held that “restitution is statutorily available for all unauthorized transactions as a direct result of defendant's *criminal conduct and conviction for grand theft . . . during the time frame in question.*” *Schultz*, 148 Idaho at 886-87. Unlike in *Schultz*, Mr. Adams was *acquitted* of grand theft, and therefore the district court did not have the authority to order him to pay restitution as if he had been convicted of grand theft.

The State also mischaracterizes Mr. Adams’ reliance upon the Court of Appeals’ holding in *State v. Aubert*, 119 Idaho 868 (Ct. App. 1991), distinguishing that case by noting, “The unauthorized debit transactions here were not uncharged thefts; they were the thefts underlying the second count of grand theft in the information.” (Resp. Br., pp.12-13.) But Mr. Adams did not argue that *Aubert* “controls,” and noted the very distinction the State makes between the facts in that case and the facts of his case. (App. Br., p.13.) More significantly, the State argues that *Schultz* should control over *Aubert* because it was a more recent decision, but fails to acknowledge that the *Schultz* court cited *Aubert* in support of its holding. *See Schultz*, 148 Idaho at 886-87. In support of its statement acknowledging, “Restitution depends on the existence of the crime for which the offender was convicted,” the *Schultz* Court cited to *Aubert*, 119 Idaho at 870, n.5. *Schultz*, 148 Idaho at 886-87. The *Aubert* footnote the *Schultz* Court relied upon states, “As a general rule, restitution depends on the existence of the crime for which the offender was convicted and *a person may not be ordered to pay restitution for a crime for which he was not convicted.* *Aubert*, 119 Idaho at 870 n.5 (citing 24 C.J.S. *Criminal Law* § 1774(a) p.431 (1989) (emphasis added)). In short, *Schultz* did not call into question the *Aubert* Court’s reasoning, but instead emphasized its importance, and the opinion supports Mr. Adams’ Argument that the district court did not have the authority to order him to pay restitution for an alleged crime for which he was acquitted.

C. Idaho Code § 19-5304(6) Does Not Allow A Trial Court To Second-Guess The Jury's Verdict Using The Preponderance Of The Evidence Standard

The State argues, “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 a reasonable doubt.” (Resp. Br., p.9 (citing *Richmond*, 137 Idaho at 37-38).) The State’s understanding of the jury’s role in his case is fundamentally flawed.

The jury was not asked to determine “the amount of economic loss for purposes of the conviction” I.I.S. suffered – the jury was asked to determine whether Mr. Adams committed grand theft, and if it found him not guilty of that, whether Mr. Adams committed petit theft. (R., pp.260-62 (jury instructions related to Count II).) This was not a case where Mr. Adams admitted that he committed a theft through his unauthorized use of I.I.S.’s credit card, but argued the amount he stole did not meet the \$1,000.00 threshold for grand theft. Instead, Mr. Adams admitted that he put \$15,053.49 on his I.I.S. debit card, but he explained to the jury that as the co-owner of the business, he did not need anyone’s authorization before doing so. (Tr., p.190, L.23 – p.212, L.4; p.436, Ls.7-22; 444, L.10 – p.458, L.4.) The jury specifically rejected the State’s allegation that Mr. Adams’ actions amounted to grand theft. (R., p.273 (verdict for Count II)). It seems likely that the jury accepted Mr. Adams’ explanation that he did not need anyone’s permission to use the company debit card, but 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.)

More importantly, the preponderance standard applies only to the determination of the economic loss suffered by the victim as a result of the crime reflected in the judgment of

conviction, I.C. § 19-5304(1)(b), not the crime the State alleged the defendant committed. I.C. § 19-5304(6). The legislature saw fit to limit the restitution a court can order to those crimes for which the defendant either pleaded guilty, thereby admitting his guilt beyond a reasonable doubt, or was found guilty beyond a reasonable doubt. *See* I.C. § 19-5304(1)(b). The State's reading of I.C. § 19-5304(6) would allow a trial court to second-guess the jury's actual verdict and make its own determination of what crime Mr. Adams committed, using a preponderance of the evidence standard. But the preponderance standard is used to determine the amount of economic loss the victim suffered as a result of the crime for which the defendant was actually convicted, not the crime the State alleged or the court believed the defendant committed. *See* I.C. § 19-5304(6). The State's argument is without merit.

D. The State Erroneously Claims The *Richmond* Decision Was Based Upon The Plain Language Of I.C. § 19-5304, Rather Than That Court's Understanding Of The Policy Behind The Statute

The State claims that Mr. Adams provided an "inaccurate portrayal" of the *Richmond* opinion by arguing that case was decided based upon "a perceived policy behind the restitution statute, rather than the statute itself." (Resp. Br., p.11.) The State argues the *Richmond* Court merely "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." (Resp. Br., p.11 (citing *Richmond*, 137 Idaho at 38).) It is the State that inaccurately portrays *Richmond*.

Per the *Richmond* Court:

In making its decision, the district court explained:

I think *given the legislature's preference to making victims of crimes whole* and 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.

We agree with the district court's reasoning. It is often stated that the *policy behind our restitution statute* favors full compensation to crime victims who suffer economic loss. *See [State v.] Bybee*, 115 Idaho [541,] 543 [Ct. App. 1989]. By establishing that economic losses are to be determined by a civil preponderance of the evidence standard, I.C. § 19-5304(6), *the legislature clearly intended* to allow trial courts in a criminal case to resolve the restitution question, 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. *See State v. Terpstra*, 546 N.W.2d 280 (Minn., 1996.) Furthermore, *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, petty 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.

Richmond, 137 Idaho at 38-39 (emphasis added). The *Richmond* Court's reference to the "policy behind our restitution statute," and its repeated reference to the legislature's intent, unequivocally shows that the Court's holding in that case was based upon its interpretation of the policy behind, and the legislature's intent in passing, I.C. § 19-5304. The *Richmond* Court referred to the preponderance standard contained in I.C. § 19-5304(6) in order to determine the legislature's intent, and concluded, "*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, petty theft, and the two grades of malicious injury to property." *Richmond*, 137 Idaho at 39 (emphasis added). The State's description of the *Richmond* decision is inaccurate.

Additionally, the State argues, "The difference in burdens of proof reflect the purpose of the restitution proceeding—to provide the victim a means of obtaining recompense without having to file a separate civil action." (Resp. Br., p.8.) The State goes on to quote from other cases discussing the purpose of Idaho's restitution statute and its use of the preponderance of the

evidence standard. (Resp. Br., pp.8-9 (citations omitted).) But ““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)). In short, the State makes the same mistake the *Richmond* Court made – relying on the purported purpose of I.C. § 19-5304 to define a court’s authority to order restitution, rather than the plain language of the statute. The State’s argument is without merit.

E. The State’s Reliance Upon Authority From Other States Is Misplaced

The State cites state court decisions from Wyoming, Florida, Washington, Oregon, and Kansas, in support of its argument that the Idaho Court of Appeals decided *Richmond* correctly. (Resp. Br., pp.10-11.) Those decisions are irrelevant. An Idaho trial court’s authority to order restitution stems from Idaho statutes, and Idaho appellate courts interpret Idaho statutes based upon the plain language of those statutes, not on how another state’s courts interpret that state’s restitution laws. *See Verska*, 151 Idaho at 892-93. This Court should disregard this irrelevant jurisprudence from other states.

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 9th day of July, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2021, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to be served as follows:

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Administrative Assistant

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