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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48459-2020
Plaintiff-Respondent,)	
)	BINGHAM COUNTY NO. CR06-19-4544
v.)	
)	
KADEN A. HOWELL,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

HONORABLE DARREN B. SIMPSON
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Kaden Howell pled guilty to one count of felony battery on certain personnel, and one count misdemeanor resisting and obstructing. He received a unified sentence of five years, with two years fixed, but the district court retained jurisdiction. On appeal, Mr. Howell contends that the district court abused its discretion by ordering him to pay \$29,585.63 in restitution.

Statement of the Facts and Course of Proceedings

On October 18, 2019, officers responded to a call advising that Kaden Howell was in front of a residence, had been asked to leave, and refused. (Presentence Investigation Report (*hereinafter*, PSI),¹ p.5.) Mr. Howell was cited for second degree stalking. (PSI, p.5.) That same day, officers returned to the residence in response to a report that Mr. Howell was sitting outside the residence in a vehicle. (PSI, p.5.) Officers detained Mr. Howell. (PSI, p.5.) He became combative when officers attempted to adjust the handcuffs. (PSI, p.184.) Mr. Howell flailed and kicked wildly. (PSI, p.5.) Chief Rodney Mohler and Officer Weston Hyman suffered cuts and bruises in their efforts to subdue Mr. Howell. (PSI, p.5; R., p.11.) Another officer, Jeffrey Hintze, who was holding onto Mr. Howell's arm, fell against the running board of a nearby pickup truck. (PSI, p.5.) Officer Hintze, suffered a small laceration on his head. (PSI, p.5.)

Based on these facts, Mr. Howell was charged by Information with one count of felony battery on certain law enforcement personnel, and one count of misdemeanor resisting and obstructing. (R., pp.22-23.) Pursuant to a plea agreement, Mr. Howell pled guilty as charged.

¹ Appellant's use of the designation "PSI" includes the packet of documents grouped with the electronic copy of the PSI, and the page numbers cited shall refer to the corresponding page of the electronic file.

(R., pp.57-69.) The State agreed to concur with the sentencing recommendation contained in the PSI.² (R., pp.60, 67.) Pursuant to the terms of the plea agreement, Mr. Howell “agree[d] to pay restitution to the Idaho State Insurance Fund (Claim # 201912635) in an amount yet to be determined but estimated at \$2,500 in CR06-19-4544.” (R., p.67.) After the plea agreement was signed by the parties, the State filed a request for \$21,447.02 in restitution to be paid to the Idaho Worker’s Compensation Fund. (R., pp.76-79.)

Mr. Howell was sentenced to five years, with two years fixed, but the district court retained jurisdiction. (R., pp.102-06.) In the Judgment of Conviction, Order Retaining Jurisdiction, the district court ordered Mr. Howell to pay restitution in the sum of \$752.03. (R., p.103.) After sentencing, the State amended its motion to set restitution, seeking \$29,583.63 in restitution to Idaho Workers Compensation. (R., pp.109-17.) The court set the matter for a restitution hearing. (R., pp.96-97.)

At the conclusion of the hearing, the district court orally ordered Mr. Howell to pay restitution in the amount of \$29,035.60. (*See* Tr., p.28, Ls.5-11.) Thereafter, the district court entered a written order for Mr. Howell to pay \$29,583.63 in restitution to Idaho Workers Compensation. (R., pp.119-20.) Mr. Howell timely appealed from the Order of Restitution For The Benefit of Idaho Workers Compensation. (R., pp.125-28.)

² Mr. Howell had several outstanding criminal cases that were resolved globally through the plea agreement. (R., pp.66-67.)

ISSUE

Did the district court abuse its discretion when it ordered Mr. Howell to pay \$29,583.63 in restitution?

ARGUMENT

The District Court Abused Its Discretion By Ordering Mr. Howell To Pay \$29,583.63 In Restitution

A. Introduction

Mr. Howell challenges the district court's order requiring him to pay \$29,583.63 in restitution because that amount was not supported by substantial and competent evidence. He asserts that the district court abused its discretion by filing a written order requiring Mr. Howell to pay \$29,583.63, where, at the restitution hearing, the district court found \$29,035.63 to be due and owed as restitution.

B. Standard Of Review

“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)). Appellate courts use a four-part test for determining whether a district court abused its discretion: 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, 863, 421 P.3d 187, 194 (2018). When reviewing a decision to order restitution, the appellate court will defer to the district court's factual findings if they are supported by substantial evidence. *State v. Straub*, 153 Idaho 882, 886 (2013). However, it will exercise free review over the application of the law to the facts. *Id.*

C. The District Court Abused Its Discretion By Ordering Mr. Howell To Pay Restitution In The Amount Of \$29,583.63

“Idaho’s restitution statute permits a court to order restitution for ‘any crime which results in an economic loss to the victim.’” *Corbus*, 150 Idaho at 602 (quoting I.C. § 19-5304(2)). Restitution may be awarded for “any economic loss which the victim actually suffers” as a result of the conduct for which the defendant has been found guilty. I.C. § 19-5304(2); *State v. Nienburg*, 153 Idaho 491, 495 (Ct. App. 2012). Economic loss is defined by the statute and includes “direct out-of-pocket losses or expenses, such as medical expenses resulting from the criminal conduct.” I.C. § 19-5304(1)(a). In order to prove that such losses are actually recoverable under that statute, the State must prove the out-of-pocket losses. *See, e.g., State v. Card*, 146 Idaho 111, 114-15 (Ct. App. 2008) (reiterating that the amount of the economic loss must be proved by a preponderance of the evidence). The Idaho Supreme Court has explained out-of-pocket losses are “consisting of or requiring an actual cash outlay,” and “actually” is something “existing in fact or reality.” *Id.*

In its amended motion to set restitution, the State requested restitution in the amount of \$29,583.63. (R., pp.109-10.) In support of that request, the State attached documentation from the Idaho State Insurance Fund (“ISIF”), which indicated that ISIF made payments on behalf of Officer Hintze which totaled \$28,831.60. (R., pp.109-117.) The attached documentation also included a letter regarding injured worker Rodney Mohler, with an injury payment totaling \$752.03. (R., pp.116-17.)

At the restitution hearing, the State’s witness, ISIF employee Mary McCoy, testified that Officer Hintze’s medical expenses and lost wages totaled \$29,035.60. (Tr., p.6, L.22 – p.7, L.1.) The State did not offer any exhibits in conjunction with Ms. McCoy’s testimony. (*See* Tr., generally.) Officer Jeffrey Hintz testified that he had a laceration on his head and suffered a

torn rotator cuff and torn labrum on his right shoulder. (Tr., p.11, Ls.9-16.) He testified that he went to physical therapy for two months after the shoulder surgery. (Tr., p.15, Ls.11-20.) He testified that he missed two months of work, due to this injury. (Tr., p.16, Ls.6-8.) Officer Hintze testified that he had previously injured his right shoulder and had surgery to repair a torn labrum in 1994. (Tr., p.20, L.24 – p.21, L.9.) Officer Hintze was not directed to identify or view any exhibits pertaining to his medical treatment or missed days of work during the restitution hearing. (See Tr., generally.) The district court took judicial “notice of the plea agreement and other pleadings filed in this matter.” (Tr., p.26, Ls.6-7.)

After hearing testimony from two witnesses, the district court concluded:

The evidence shows that on October 18, 2019 Officer Hintze was involved in his duties as a police officer for the city of Shelley and county of Bingham County, State of Idaho with Mr. Howell. That a scuffle ensued and that as a result Officer Hintze suffered injuries to his head and to his shoulder.

He may have had surgery in 1994 on his shoulder, but that doesn't mean that injury that he sustained in this incident is not the result of Mr. Howell's actions.

Ms. McCoy from the State Insurance Fund indicated that they had paid out on behalf of the City of Shelley for their employee, Officer Hintze, in the amount of \$29,035.60.

Therefore the Court finds that that amount of restitution is appropriate and will so order.

(Tr., p.27, L.19 – p.28, L.11.)

However, two days after the conclusion of the restitution hearing, the district court entered a written order requiring Mr. Howell to pay \$29,583.63 in restitution to the State Insurance Fund. (R., pp.119-20.) Because the amount of restitution ordered in writing is inconsistent with the district court's oral findings, the district court abused its discretion because its factual findings are not supported by substantial evidence and it failed to reach its decision by an exercise of reason. See *Straub*, 153 Idaho at 886 .

Thus, the district court abused its discretion by filing a written order requiring Mr. Howell to pay \$29,583.63, where, at the restitution hearing, the district court found \$29,035.63 to be due and owed as restitution. Because the amount ordered on the written order is unsupported by substantial evidence, the restitution award should be remanded for the correct amount, \$29,035.63, to be entered.

CONCLUSION

Mr. Howell respectfully requests that this Court remand the restitution order in his case with instructions to order \$29,035.63 to be paid as restitution.

DATED this 21st day of July, 2021.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

SJC/eas