

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37704

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 545
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: July 13, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
<b>CHRISTOPHER L. BLACKMER,</b>	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Order for restitution and judgment, affirmed.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Nicole L. Schafer, Deputy Attorney General, Boise, for respondent.

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MELANSON, Judge

Christopher L. Blackmer appeals from the district court’s order for restitution and judgment entered after he pled guilty to grand theft. For the reasons set forth below, we affirm.

D.B. hosted a series of gatherings at her home during the summer of 2009. Blackmer was a regular guest at these events. In July 2009, D.B. noticed that some of her jewelry was missing from the dresser in her bedroom. She initially believed she had misplaced these items but became suspicious when, in December 2009, friends informed her that Blackmer had tried to sell them two of D.B.’s necklaces. D.B. met with her friends and showed them photographs of her necklaces. Her friends confirmed that the necklaces in the photographs matched the necklaces that Blackmer had attempted to sell them. D.B. notified law enforcement and went home to search for other missing jewelry.<sup>1</sup> A few days later, undercover police officers

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<sup>1</sup> In addition to the two necklaces, D.B. was also missing one wrist bracelet, four ankle bracelets, one gold pendant, and one gold/silver chain.

purchased the necklaces from Blackmer and placed him under arrest. Officers did not locate D.B.'s additional missing jewelry.

Blackmer was charged with grand theft. I.C. §§ 18-2403(1), 18-2409. He pled guilty and agreed to pay any required restitution. The state sought restitution for the unrecovered jewelry in the amount of \$3,210. Blackmer opposed this request.<sup>2</sup> The district court ordered restitution and asked the state to submit an affidavit in support of the requested sum. Thereafter, the district court held an evidentiary hearing on the matter during which D.B. and Blackmer testified. Based upon the evidence presented, the district court ordered restitution in the amount of \$3,210. Blackmer appeals.

Blackmer argues that the district court abused its discretion in ordering restitution because the district court based its decision upon insufficient evidence. An order of restitution is committed to the trial court's discretion and will not be overturned on appeal unless an abuse of discretion is shown. *State v. Schultz*, 148 Idaho 884, 886, 231 P.3d 529, 631 (Ct. App. 2009); *State v. Dorsey*, 126 Idaho 659, 661, 889 P.2d 93, 95 (Ct. App. 1995). Courts of criminal jurisdiction generally have no authority to order restitution to a victim absent a statutory provision to that effect. *Schultz*, 148 Idaho at 886, 231 P.3d at 631. Orders of restitution are governed by I.C. § 19-5304. *Schultz*, 148 Idaho at 886, 231 P.3d at 631. Therefore, the trial court's exercise of discretion must be in accordance with I.C. § 19-5304.

Idaho Code Section 19-5304 authorizes restitution only for actual economic loss suffered by the victim. I.C. § 19-5304(1)(a), (2); *State v. Richmond*, 137 Idaho 35, 37, 43 P.3d 794, 796 (Ct. App. 2002). Economic loss is determined based upon the civil preponderance of evidence standard. I.C. § 19-5304(6); *In re Doe*, 146 Idaho 277, 283, 192 P.3d 1101, 1107 (Ct. App. 2008). Economic loss includes the value of property taken as a result of the defendant's criminal conduct. I.C. § 19-5304(1)(a); *Richmond*, 137 Idaho at 37, 42 P.3d at 796. In establishing economic loss, there must be a causal connection between the defendant's criminal conduct and the property taken. *Schultz*, 148 Idaho at 886, 231 P.3d at 531.

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<sup>2</sup> Blackmer initially argued that, since he only pled guilty to stealing the two necklaces, restitution for the other jewelry was improper. The state countered by arguing that Blackmer pled guilty to grand theft of the jewelry and that the additional missing jewelry was within the scope of that charge. Blackmer does not raise this issue on appeal.

Blackmer contends that the evidence was insufficient to support a causal connection between his theft of the necklaces and D.B.'s other missing jewelry because it is circumstantial and "exceptionally weak." Our review of a challenge to the sufficiency of the evidence is limited in scope. This Court will not substitute its view for that of the trier of fact as to the credibility of witnesses, the weight given to testimony, and the reasonable inferences to be drawn from the evidence. *State v. Flowers*, 131 Idaho 205, 207, 953 P.2d 645, 647 (Ct. App. 1998). This Court also considers the evidence in the light most favorable to the prevailing party. *Id.* Furthermore, the trial court's findings of fact will not be disturbed if supported by substantial evidence. *Schultz*, 148 Idaho at 886, 231 P.3d at 531. Substantial evidence may be found even when the evidence presented is solely circumstantial. *State v. Severson*, 147 Idaho 694, 712, 215 P.3d 414, 432 (2009).

The evidence before the district court at the restitution hearing consisted mainly of D.B.'s and Blackmer's testimony. D.B.'s testimony provided the following:

- (1) Blackmer was a regular guest at D.B.'s home during the summer of 2009;
- (2) On most occasions, Blackmer was one of up to three guests, but sometimes there were as many as twelve guests;
- (3) Blackmer had access to the interior of the home during his visits;
- (4) D.B. first noticed some of her jewelry was missing in July 2009;
- (5) D.B. noticed other jewelry was missing in December 2009;
- (6) D.B. stored her jewelry, including the two necklaces Blackmer possessed, in or on top of an unlocked dresser in her bedroom;
- (7) Two of D.B.'s cameras went missing that summer;<sup>3</sup>
- (8) Blackmer had handled and commented on one of the cameras just before it went missing.

Blackmer testified and denied taking any jewelry from D.B.'s home. Blackmer, instead, claimed that he took the two necklaces from another person's car. He also admitted to previously lying about the origin of the necklaces and claimed to have no knowledge of the additional missing jewelry. The district court doubted the truthfulness of Blackmer's statements and accepted D.B.'s testimony as the more credible account. The district court also acknowledged that Blackmer was found in actual possession of two of D.B.'s necklaces.

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<sup>3</sup> The state initially sought restitution for the missing cameras but withdrew its request because Blackmer only pled guilty to grand theft of the jewelry and the cameras were not kept in the same location as the jewelry.

Upon considering this evidence in the light most favorable to the state, we conclude that there was substantial evidence from which the district court could find a causal connection between Blackmer's theft of the two necklaces and D.B.'s additional missing jewelry. Therefore, the district court did not abuse its discretion and the order of restitution and judgment is affirmed.

Chief Judge GRATTON, **CONCURS.**

Judge GUTIERREZ, **DISSENTS.**