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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0210**

State of Minnesota,
Respondent,

vs.

Lynell Ellison,
Appellant.

**Filed September 10, 2018
Affirmed
Reilly, Judge**

Stearns County District Court
File No. 73-CR-16-2791

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, Hannah J. Prokopowicz, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges the district court's order for restitution arising from his convictions of aiding and abetting first-degree aggravated robbery and aiding and abetting

second-degree assault. Because there was sufficient evidence for the court to award restitution in the amount it did, we affirm.

FACTS

Appellant and another individual stole marijuana from L.K. during the course of a drug deal. They also stole L.K.'s backpack, iPhone, wallet, cash, a money order, and other miscellaneous items. Appellant was convicted of aiding and abetting first-degree aggravated robbery and aiding and abetting second-degree assault. After the robbery, L.K. filed a restitution affidavit. The requested restitution included \$648 for the stolen items and \$77 for lost wages. Appellant contested the restitution, claiming that L.K. did not provide sufficient evidence to prove the value of what was taken. L.K. testified at the contested restitution hearing. The district court also admitted into evidence L.K.'s affidavit detailing his restitution request. In opposing L.K.'s request, appellant did not testify and offered only an affidavit attacking L.K.'s credibility. The district court awarded L.K. \$725 in restitution.

This appeal followed.

DECISION

District courts have broad discretion to award restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). A district court's order for restitution is reviewed for an abuse of discretion. *Id.* at 672. "A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge" against a convicted offender. Minn. Stat. § 611A.04, subd. 1(a) (2016). Restitution may include out-of-pocket losses arising from the offense, including lost wages. *Id.* When analyzing a restitution award, the district court

must consider the economic loss suffered by the victim as a result of the offense and “the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2016). A request for restitution must include information describing the “items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts” Minn. Stat. § 611A.04, subd. 1(a). The prosecution bears the burden of demonstrating the amount of loss sustained by a victim as a result of the offense by a preponderance of the evidence. Minn. Stat. § 611A.045, subd. 3(a). At a restitution hearing, “if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts,” he bears the burden of production. *Id.* A district court has discretion in determining the amount of restitution, as long as a factual basis exists to connect the requested restitution to the crime committed. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). Any dispute is resolved at the district court by the preponderance of the evidence. Minn. Stat. § 611A.045, subd. 3(a).

First, appellant argues that L.K. did not adequately prove lost wages because he did not provide tangible proof or documentation. Though L.K. did not submit paystubs or other documentation from his workplace to support his request for restitution, such proof is not required. *See State v. O’Brien*, 459 N.W.2d 131, 135 (Minn. App. 1990) (approved district court’s reliance on victim’s affidavit and testimony regarding costs without requiring documentation). On its face, there is a factual basis for L.K.’s request for restitution for \$77 in lost wages. L.K. testified that he was paid \$11 an hour at Buffalo Wild Wings and that he missed seven hours of work over two days. In opposing L.K.’s request for restitution, appellant submitted an affidavit that attacked the credibility of

L.K.'s affidavit. The district court heard L.K.'s testimony at the restitution hearing and appellant's counsel cross-examined L.K. The district court was in the best position to determine L.K.'s credibility, and we generally defer to a district court's evaluation of witness credibility. *State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016), *see also Bobo v. State*, 860 N.W.2d 681, 684 (Minn. 2015) (stating that this court reviews credibility determinations under the "high threshold" of the clear error standard). Because there was a factual basis in the record to support L.K.'s claim for restitution for lost wages, and because appellant offered no contradictory evidence, the district court did not abuse its discretion when it granted L.K. restitution for lost wages.

Second, appellant argues L.K. failed to prove that he lost \$70 in cash and a \$280 money order because L.K. failed to provide record documentation to support his request and made inconsistent statements about his loss. With regard to documentation, L.K. testified that he could not provide the receipt for the money order because the receipt was in the stolen backpack. And, as discussed above, actual documentation is not required to support a request for restitution.

With regard to L.K.'s statements, L.K. initially told police that no items were in the backpack when it was stolen and that his stolen wallet contained between \$40 and \$70. L.K. later claimed that his backpack contained a \$280 money order that he intended to use to pay rent and that his wallet contained \$70 in cash. At the restitution hearing, L.K. testified that he was initially untruthful to police because he was worried about getting in trouble for selling drugs. The district court credited L.K.'s testimony and granted L.K. the restitution he requested. Because L.K.'s affidavit and testimony supports the conclusion

that restitution is proper in the amount requested, and because appellant's affidavit only attacked L.K.'s credibility, the district court did not abuse its discretion by awarding the requested restitution.

Third, appellant argues L.K. did not cite specific dollar amounts or provide tangible proof to support his request for reimbursement for his iPhone insurance deductible, iPhone case, backpack, protein shake mix, toothbrush, toothpaste, and a shaver. Appellant cites *State v. Keehn*, which holds that a requestor of restitution cannot be granted restitution by stating a general category of restitution without describing the individual items in that general category. 554 N.W.2d 405, 408 (Minn. App. 1996). In *Keehn*, the victim of domestic abuse requested restitution expenses after she moved to ensure her safety. Her restitution affidavit requested repayment for "Misc[ellaneous] Cash receipts from setting up new household," but did not provide any documentation for what items were needed to establish a new household. *Id.* at 407. The district court awarded her restitution, but this court found the request insufficient, not because it lacked actual receipts, but because it did not include some amount of detail about the general costs of items purchased. *Id.* at 408. This court noted that "[t]here is nothing in the record that specifies the miscellaneous items needed or the amounts spent," which rendered it "impossible to determine how she or the district court reached the precise figure" *Id.*

Here, L.K. provided a precise list of what was taken. L.K. provided a copy of his iPhone insurance claim, which listed the deductible as \$200. L.K. included a document showing what it would cost to purchase a comparable backpack. L.K. did not provide specific documentation for the iPhone case, protein shake mix, toothbrush, toothpaste, and

shaver. However, those items' values are easily quantifiable. L.K. requested \$60 for those items and appellant did not challenge the dollar amount requested, only that L.K. did not provide sufficient documentation. As a whole, the restitution request provided by L.K. was detailed enough under *Keehn*. Furthermore, the request complies with the statute, which requires simply a description, an itemization of the restitution claimed, and the reasons justifying the requested amounts. Minn. Stat. § 611A.04, subd. 1(a). L.K. provided the necessary information, and the district court did not abuse its discretion by granting the requested restitution.

Affirmed.