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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1457**

State of Minnesota,
Respondent,

vs.

Jason Paul Hirman,
Appellant.

**Filed May 6, 2019
Affirmed in part, reversed in part, and remanded
Jesson, Judge**

Dakota County District Court
File No. 19HA-CR-13-1031

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Torrie J. Schneider, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

JESSON, Judge

After his conviction for receiving stolen property—which stemmed from his involvement with a stolen sewer inspection system—the district court ordered appellant

Jason Paul Hirman to pay \$5,000 in restitution. The restitution related to both the inspection system and the trailer which originally carried it. Hirman appeals, arguing that the losses were not a direct result of the conduct for which he was convicted. Because his conduct was tied to the damage of a portion of the stolen property, but not to all of it, we affirm in part, reverse in part, and remand.

FACTS

In August 2012, R.B. bought the contents of a storage locker at auction, and found a unique piece of equipment, with its serial number still intact. R.B. contacted the manufacturing company. The company, ABM Equipment and Supply, identified the equipment as a sewer inspection system, and informed R.B. that it had been stolen a year earlier. ABM Equipment then called the police to report that the stolen inspection system (valued at over \$40,000) had been found.

The police spoke with K.S., the former renter of the storage unit. K.S. stated that in late summer or early fall of 2011, appellant Jason Paul Hirman asked her if he could store an item in her storage unit. She agreed. Hirman met K.S. at her storage unit, removed a “big metal box” from his truck, and placed it in the unit. But after she was unable to make the monthly storage unit payments, the storage facility sold the contents of her unit to R.B.

The state charged Hirman with receiving stolen property in violation of Minnesota Statutes section 609.53, subdivision 1 (2010). The complaint alleged that Hirman received or possessed the inspection system found in K.S.’s storage unit, knowing or having reason

to know it was stolen. The jury found Hirman guilty of receiving stolen property valued over \$5,000. This court affirmed Hirman's conviction.¹

In January 2018, the district court ordered Hirman to pay restitution to ABM Equipment and to United Fire and Casualty Company, the company that insured the inspection system and paid ABM Equipment for the loss.² Hirman objected and requested a restitution hearing. After the hearing, the district court ordered Hirman to pay restitution to ABM Equipment for its out-of-pocket loss—\$2,000 in deductibles—and \$3,000 to United Fire and Casualty. Hirman appeals.

DECISION

Hirman argues that the district court abused its discretion by ordering him to pay \$5,000 in restitution when there was no evidence that he either stole or damaged the inspection system. Alternatively, Hirman asserts that the restitution should be reduced by \$1,000 because the theft of the trailer cannot be linked to him.

The district court has broad discretion to award restitution, and this court will not reverse a district court's order absent an abuse of that discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). And the factual findings of the district court will not be disturbed unless they are clearly erroneous. *Id.* “But determining whether an item meets the statutory requirements for restitution is a question of law that is fully reviewable by the appellate court.” *State v. Nelson*, 796 N.W.2d 343, 346-47 (Minn. App. 2011).

¹ *State v. Hirman*, No. A16-0928, 2017 WL 1833245 (Minn. App. May 8, 2017), *review denied* (Minn. July 18, 2017).

² Hirman was initially ordered to pay as restitution \$2,000 to ABM Equipment and \$62,931.51 to United Fire and Casualty Company.

Under the restitution statute, a victim has the right to receive restitution for a specific loss if the defendant is convicted of a crime. Minn. Stat. § 611A.04, subd. 1(a) (2010). A request for restitution “may include, but is not limited to, any out-of-pocket losses resulting from the crime.” *Id.* But a loss claimed as an item of restitution “must have some factual relationship to the crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted.” *Nelson*, 796 N.W.2d at 347 (quotation omitted). And the amount of restitution, when disputed, must be proved by a preponderance of the evidence. Minn. Stat. § 611A.045, subd. 3(a) (2010).

Here, Hirman was convicted of receiving stolen property—the inspection system found in the storage unit. In addressing Hirman’s argument that he did not “directly cause” the loss, we are guided by Minnesota caselaw addressing the issue of restitution in receiving-stolen-property cases. In *State v. Larson*, this court affirmed a restitution award for losses sustained by a taconite company when large metal bushings were stolen. 393 N.W.2d 238, 243 (Minn. App. 1986). There, the bushings were new when stolen, but were damaged when recovered. *Id.* at 240. Although there was no direct evidence tying the defendant in *Larson* to the damage, we concluded that it was not an abuse of discretion when the district court ordered a restitution award of \$34,681 to be paid by the defendant who received the stolen metal bushings. *Id.* at 241, 243. Similarly, in *State v. Anderson*, we upheld a restitution award of \$300, which represented the value of stolen calves which the *Anderson* defendant received. 405 N.W.2d 527, 531 (Minn. App. 1987), *review denied* (Minn. July 22, 1987). As in *Larson*, the defendant was found to be “a direct cause of the victim’s loss,” despite the fact that he may have had no part in the taking. *Id.*

As in *Anderson* and *Larson*, receipt of the stolen property here was—in and of itself—sufficient support for the restitution order. Although Hiram had no proven part in the taking, he received the inspection system and placed it into the storage unit. But even if, as Hirman claims, the state must show a relationship between his possession and the subsequent damage to the system, *Larson* guides us to the conclusion that a sufficient tie exists here. There is no evidence in the record that anyone else accessed or damaged the inspection system after it was placed in the storage unit. Accordingly, as in *Larson*, Hirman is tied to the damage to the inspection system through receipt of the stolen inspection system, and possession of it.

Still, Hirman cites several cases in support of his argument that because he was not convicted of conduct that led to the loss of the inspection system, he did not directly cause the loss. See *Nelson*, 796 N.W.2d at 347-48 (district court erred by considering losses that occurred outside the charging period); *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999) (district court erred in awarding restitution for losses stemming from murder, in which defendant took no part); *State v. Esler*, 553 N.W.2d 61, 65 (Minn. App. 1996) (district court erred in awarding restitution for shooting incident which took place several hours prior to the murder for which defendant was convicted), *review denied* (Minn. Oct. 15, 1996). But these cases are not as helpful as Hirman urges us to conclude. In each, the restitution was based upon losses that were not related to the defendants' convictions. Here, restitution was ordered for the loss of the inspection system, which Hirman possessed.

Hirman also points to *State v. Jola*, where this court upheld a restitution order where the defendants possessed a stolen truck for over a year, and dismantled and distributed its parts. 409 N.W.2d 17, 19 (Minn. App. 1987). Unlike *Jola*, Hirman contends he was only tied to possession of the inspection system, not the damage. But, as *Larson* instructs us, one need not be tied to both possession and damage. One is enough. And here, as in *Jola*, Hirman possessed the inspection system—by storing it in K.S.’s storage unit—for approximately one year, and it was damaged upon recovery.

In sum, Hirman is tied to the receipt of stolen property, as well as to the damage of the stolen inspection system through time, place, and possession. His conduct is a direct cause of the economic loss suffered by ABM Equipment and United Fire and Casualty.

We next turn to the issue of the appropriate amount of restitution. The district court found that ABM Equipment’s out-of-pocket economic loss was \$2,000 and United Fire and Casualty’s out-of-pocket loss was in excess of \$3,000, resulting in the \$5,000 restitution award. But half of ABM Equipment’s \$2,000 out-of-pocket loss consisted of the \$1,000 deductible ABM paid United Fire for the trailer. Here, Hirman was convicted only of receiving the stolen inspection system, not the trailer. Nothing in this record ties Hirman to the loss involving the trailer. As a result, we conclude that the district court abused its discretion in awarding ABM Equipment \$1,000 in restitution for the economic loss relating to the trailer.

In conclusion, because the district court appropriately awarded restitution related to the stolen inspection system, but abused its discretion in awarding \$1,000 to ABM Equipment for the deductible related to the loss of the trailer, we affirm the restitution

award for the loss of the inspection system, but we reverse the restitution award for the loss of the trailer. And we remand for the district court to issue an amended order consistent with this decision.

Affirmed in part, reversed in part, and remanded.