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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0050**

State of Minnesota,
Respondent,

vs.

Tyler Jordan Sargent,
Appellant.

**Filed October 7, 2019
Reversed and remanded
Slieter, Judge**

Mahnomen County District Court
File No. 44-CR-17-892

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

Mitchell Schluter, Mahnomen County Attorney, John A. Olson, Assistant County Attorney, Mahnomen, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Presiding Chief Judge; Reilly, Judge; and
Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

In this appeal following a contested restitution hearing, appellant Tyler Jordan Sargent argues that the district court did not place the burden of proof onto the state as

required by the restitution statute.¹ Because Minn. Stat. § 611A.045, subd. 3 (2016), places the burden of proof on the state at a contested restitution hearing, the district court misapplied the burden. We reverse and remand.

FACTS

According to the district court's findings at the restitution hearing, K.P. contacted law enforcement related to the theft of a vehicle she owned with D.H., her grandson. Law enforcement found the vehicle in the City of Mahanomen in Sargent's possession. Law enforcement took possession of the vehicle and property located in the vehicle to return it to K.P. and D.H. D.H. requested that law enforcement search for particular pieces of property that he left in the vehicle, but law enforcement did not find those items. The state charged Sargent with: (1) theft of moveable property, in violation of Minn. Stat. § 609.52, subds. 2(a)(1), 3(3)(a) (2016); (2) theft of a motor vehicle, in violation of Minn. Stat. § 609.52, subds. 2(a)(1), 3(3)(d)(v) (2016); and (3) theft by taking a motor vehicle without the owner's consent, in violation of Minn. Stat. § 609.52, subds. 2(a)(17), 3(3)(d)(v) (2016).

Sargent pleaded guilty to count 1 pursuant to a plea agreement that resolved two additional criminal files. Part of the written plea agreement included a term providing that

¹ Sargent also raises challenges to the district court's procedure at the restitution hearing for: (1) ignoring the rules of evidence and (2) not vindicating his right to confront his accusers. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall . . . be confronted with the witnesses against him; . . ."); *State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017) (holding that the rules of evidence apply in restitution proceedings). We do not find it necessary to address these issues because the matter is reversed and remanded on other grounds.

Sargent agreed to “[p]ay restitution to the victim(s) in [the theft file].” Sargent acknowledged, as part of the plea, that he took D.H.’s property out of the vehicle without D.H.’s permission, and it was valued between \$1,000 and \$5,000. After the district court accepted Sargent’s plea, the district court sentenced Sargent to 21 months’ imprisonment related to the theft of movable property offense. The district court reserved the issue of restitution and dismissed the remaining two counts in the complaint.

At the contested restitution hearing, K.P., the only victim who filed an affidavit of restitution, did not appear. K.P. claimed \$2,095 in losses from Sargent’s theft offense. The state indicated that K.P. was afraid to appear for the hearing and it would rely on K.P.’s affidavit. Sargent challenged the losses claimed by K.P. in an affidavit that argued D.H. sustained the economic losses rather than K.P. The state did not offer any other evidence and relied on K.P.’s affidavit as the basis for the restitution claim. In Sargent’s written brief to the district court, he also argued that the state failed to meet its burden because K.P. did not appear to testify and supplement the record about the claimed losses.

On October 17, 2018, the district court ordered Sargent to pay restitution to K.P. in the amount of \$2,095. The district court noted that it did not receive testimony at the restitution hearing and “the facts of this case [were] derived from the probable cause portion of the [c]omplaint that was accepted by the [c]ourt at sentencing on January 9, 2018, as well as the factual basis set forth by . . . Sargent that same day.” The district court also considered Sargent’s and K.P.’s affidavits as part of its decision.

The district court recognized that Sargent pleaded guilty to the theft offense for personal property missing from the vehicle and—based on the plea agreement—Sargent

agreed to pay restitution for the offenses in the file. The district court reasoned that K.P. and D.H. are victims of the offense because Sargent stole the property. But the district court also recognized that the record was “unclear” about the owners of the *personal property* at issue. As to the personal property, the district court found it was “entirely possible” that the property in the vehicle was owned by K.P. The district court concluded:

The burden is on [Sargent] to challenge the restitution relating to the items of personal property. All that [Sargent] has done in this regard is to make a general statement that [K.P.] is not the owner. That is insufficient. The [c]ourt finds that [Sargent] has not met his burden.

The district court found that Sargent has the means to pay restitution. This appeal follows.

D E C I S I O N

“A district court has broad discretion to award restitution, and the district court’s order will not be reversed absent an abuse of that discretion.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “Whether a particular claim for restitution fits within the statutory definition is a question of law, which this court reviews de novo.” *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

“The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). Based on this purpose, a victim has a statutory right to restitution for specific losses caused by the defendant if the defendant is convicted of a crime. Minn. Stat. § 611A.04, subd. 1(a) (2016); *State v. Davis*, 907 N.W.2d 220, 224-26 (Minn. App.

2018) (recognizing a victim’s statutory right to restitution), *review denied* (Minn. Apr. 17, 2018).

When a district court addresses “whether to order restitution and the amount of the restitution” it must consider two factors: “(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a); *see also State v. Riggs*, 865 N.W.2d 679, 686 (Minn. 2015) (holding that a district court errs by considering factors outside the two statutory criteria for awarding restitution). The word “victim” in the restitution statute is defined to include “a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime.” Minn. Stat. § 611A.01(b).

Pursuant to Minn. Stat. § 611A.045, subd. 3(a) (2016), a defendant challenging restitution has two burdens: a burden of pleading and a burden of production. *State v. Thole*, 614 N.W.2d 231, 235 (Minn. App. 2000). A defendant must plead in “a detailed sworn affidavit . . . all challenges to the restitution or items of restitution, and specify all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims.” Minn. Stat. § 611A.045, subd. 3(a). After a defendant meets these burdens, then “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.” *Id.* The burden of proof on the state “must be resolved by the court by the preponderance of the evidence.” *Id.*; *see also State v. Maxwell*, 802 N.W.2d 849, 853 (Minn. App. 2011) (concluding that a defendant has no right to a jury trial on restitution), *review denied* (Minn. Oct. 26, 2011).

Sargent challenges the district court's restitution order for failing to place the burden on the state at the restitution hearing after he met his burden of production. We agree.

Rather than placing the burden of proof on the state, the district court placed the burden on Sargent to prove that K.P. was not the owner of the property. This conflicts with the statutory scheme. See Minn. Stat. § 611A.045, subd. 3 ("The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution."). The district court did not properly place the burden of proof on the state to establish K.P. as a victim of the offense who suffered an economic loss; the restitution order, accordingly, must be reversed. We also determine that remand is appropriate to allow an opportunity for the proper legal standard to be applied to the restitution request made by K.P. See *State v. Boettcher*, 931 N.W.2d 376, 381-82 (Minn. 2019).

Sargent also argues on appeal that restitution cannot be ordered related to damage to K.P. and D.H.'s vehicle because he was not convicted for those offenses as part of the plea agreement. It is prudent to address this issue now because it may arise on remand. See *State v. Vahabi*, 529 N.W.2d 359, 361 (Minn. App. 1995). The district court found that Sargent's plea agreement reflected that he would pay restitution in the criminal file that charged Sargent with theft of the vehicle and personal property. In reaching this conclusion, the district court explained that at Sargent's plea hearing, he agreed to pay restitution. The record supports the district court's conclusion. In accordance with *Boettcher*, Sargent's plea agreement does permit restitution in this context for dismissed

charges as part of restitution. 931 N.W.2d at 381 n.5 (“Principles that apply to criminal restitution in guilty-plea cases are inapplicable.”) (citation omitted).

Reversed and remanded.