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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0684**

State of Minnesota,
Respondent,

vs.

Demetrius Lamont Chestnut,
Appellant.

**Filed April 6, 2020
Reversed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-18-12986

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Demetrius Lamont Chestnut sprayed mace at a physician in an examination room at a Minneapolis hospital. He pleaded guilty to fourth-degree assault of emergency medical

personnel. The district court ordered him to pay \$2,000 in restitution to the physician because she lost a pair of diamond earrings in the aftermath of the assault. We conclude that the evidentiary record of the restitution hearing lacks any evidence to support the restitution award. Therefore, we reverse.

FACTS

On April 12, 2018, Chestnut went to Fairview Riverside hospital in Minneapolis for medical care because of numbness in his feet. While speaking with medical staff, he became upset and cried because he believed that his condition might require amputation. A hospital staff member called security because she was concerned for Chestnut's mental stability. Chestnut tried to leave the hospital, but hospital staff placed him in a wheelchair and took him to a secure room in the emergency department. While alone in the room, Chestnut banged his head against the wall. Two physicians later entered the room to examine Chestnut. Chestnut sprayed a canister of mace at one of the physicians, which caused injuries to her eyes. Chestnut explained later that he "just couldn't think" when he sprayed the mace.

The state charged Chestnut with two counts of fourth-degree assault of emergency medical personnel, in violation of Minn. Stat. § 609.2231, subd. 2(2) (2016). In December 2018, the parties entered into a plea agreement pursuant to which Chestnut pleaded guilty to the first count and the state dismissed the second count. At the sentencing hearing, the state submitted a victim-impact statement of the physician, who stated, among other things, that she missed work because of injuries suffered in the incident and that, in the aftermath of the assault, she lost a pair of diamond earrings that her since-deceased parents had given

her upon her graduation from medical school. The district court sentenced Chestnut to 365 days in the workhouse, with 335 days stayed, and placed him on probation for two years. The district court also ordered Chestnut to pay \$2,500 in restitution to the physician.

Chestnut later challenged the restitution award and requested a restitution hearing. He submitted an affidavit in which he stated, among other things, that he did not cause the physician to lose her earrings. Chestnut was the only witness at the restitution hearing. He testified about the incident and stated that he had no information concerning the physician's loss of her earrings. The physician did not testify and was not present. Chestnut's attorney argued that there was no causal connection between the crime and the physician's loss of her earrings, in part because there was a lack of evidence concerning how or where the physician lost her earrings. In response, the prosecutor relied on the victim-impact statement and the pre-sentence investigation report. But the prosecutor did not actually introduce the victim-impact statement and the pre-sentence investigation report into evidence at the restitution hearing.

Two weeks later, the district court reduced the restitution award by \$500 because the hospital had compensated the physician for her lost wages. The district court denied Chestnut's challenge with respect to the physician's earrings. The district court relied on "the information already contained in the record" and found that "the loss of earrings was directly related to Defendant's attack on the victim and the emergency cleaning process necessitated by his attack." Chestnut appeals.

DECISION

Chestnut argues that the district court erred by ordering him to pay \$2,000 in restitution to the physician to compensate her for the loss of her earrings. With the assistance of counsel, he makes four specific arguments for reversal. First, he argues that the state did not introduce any evidence to prove the physician's financial loss. Second, he argues that the state did not properly request restitution pursuant to the statutory procedures and timelines. Third, he argues that the state did not prove that his crime was the direct cause of the physician's financial loss. Fourth, he argues that the district court relied on inadmissible hearsay statements in the victim-impact statement and the pre-sentence investigation report. He also makes additional arguments in a *pro se* supplemental brief.

In its informal responsive brief, the state concedes error in two respects. First, the state acknowledges that the rules of evidence apply to a restitution hearing. See Minn. R. Evid. 1101(c); *State v. Willis*, 898 N.W.2d 642, 648 (Minn. 2017). The state agrees that the restitution award is based on statements in the victim-impact statement and the pre-sentence investigation report and that those two documents were “not entered as exhibits at the restitution hearing.” Accordingly, the state asserts, “The district court’s reliance on these documents is not consistent with the requirements of *Willis*.” We construe this part of the state’s brief to be a concession that Chestnut’s first and fourth arguments are meritorious.

Second, the state acknowledges the supreme court’s opinion in *State v. Boettcher*, which held that “a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” 931 N.W.2d 376, 381

(Minn. 2019). The state agrees that “the district court did not make a direct causation finding as articulated in *Boettcher*.” We construe this part of the state’s brief to be a concession that Chestnut’s third argument is meritorious insofar as the district court’s finding is inadequate, but not necessarily a concession that the facts known to the district court would not satisfy the direct-causation standard.

The state’s responsive brief concludes, “Respondent respectfully requests this Court reverse the district court’s restitution order and remand for proceedings consistent with *Willis* and *Boettcher*.” In his reply brief, Chestnut argues that this court should “simply vacate the district court’s restitution order,” without remanding for further proceedings. In addition, he reiterates his second argument and argues further that the proper remedy for that alleged error does not include a remand.

For purposes of this opinion, we accept the state’s concessions. Consequently, the only issue to be resolved is the appropriate appellate remedy. A remand may be an appropriate remedy in light of the errors alleged in Chestnut’s second, third, and fourth arguments. See *Boettcher*, 931 N.W.2d at 381; *Willis*, 898 N.W.2d at 648. But a remand is not appropriate in light of the error alleged in Chestnut’s first argument. Because Chestnut satisfied his burden of producing evidence challenging the original restitution award, the state bore the burden of proving “the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution.” See Minn. Stat. § 611A.045, subd. 3(a) (2018). The state has conceded that it simply did not introduce any evidence into the record of the restitution hearing. The state does not offer any justification for its failure to introduce any evidence. The state also does not cite any

caselaw for the proposition that a remand is appropriate after the state has failed to satisfy its burden of persuasion. Thus, we conclude that, under the circumstances, the state should not have a second opportunity to satisfy its burden of persuasion.

Reversed.