

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0549**

State of Minnesota,
Respondent,

vs.

Gary Michael Stillwell,
Appellant.

**Filed January 19, 2021
Affirmed
Gaïtas, Judge**

St. Louis County District Court
File No. 69HI-CR-19-4

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

Mark S. Rubin, St. Louis County Attorney, Tyler J. Kenefick, Assistant County Attorney,
Hibbing, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this sentencing appeal, appellant Gary Michael Stillwell challenges restitution ordered after he was convicted and sentenced for receiving stolen property. Stillwell argues that the district court abused its discretion by awarding repair costs for a stolen

trailer to the victim, a person who was not the trailer's titled owner. Because the district court did not abuse its discretion by awarding the restitution, we affirm.

FACTS

In December 2018, police officers executing a search warrant in Stillwell's house found a number of tools labeled with J.C.'s name. While the officers searched the house, Stillwell left. Neighbors then saw Stillwell crawling through the snow towards the back of his property, entering a partially concealed trailer, and leaving with items from the trailer. The trailer was partly obscured by a canopy, tarps, and sheets, and it had been spray painted with white paint but was visibly red. The officers learned that J.C., the victim in this case, had reported a red trailer stolen several days prior, and J.C. notified the police that it contained numerous tools, electronics, fishing equipment, an electronic fireplace, end tables, pictures, and memorabilia. Police soon obtained a second search warrant and searched the spray-painted trailer on Stillwell's property, where they found a wallet with J.C.'s name, along with many of the other items that belonged to J.C.

The state charged Stillwell with receiving stolen property in violation of Minn. Stat. § 609.53, subd. 1 (2018), and, following a jury trial, Stillwell was found guilty and convicted of that offense. J.C. submitted an affidavit requesting \$2,433 in restitution. At Stillwell's sentencing hearing, the district ordered him to pay the \$2,433 in full and imposed a 26-month prison sentence. Within 30 days of the sentencing hearing, Stillwell filed a pro se affidavit objecting to the amount of ordered restitution. Separately, he filed a notice of appeal from the judgment of conviction. This court later affirmed Stillwell's

conviction but reversed his sentence and remanded for recalculation of his criminal history score. *State v. Stillwell*, No. A19-1366, 2020 WL 3957279 (Minn. App. July 13, 2020).¹

In December 2019, the district court held a restitution hearing. J.C. testified at the hearing that the following items were never returned to him: an ice auger that he purchased new two years prior for \$350, but currently valued at \$300; four custom-made steel ice fishing spears valued together at \$500; and a 75-year-old handmade quilt, valued as a priceless family heirloom. He testified that a portable ice house listed in his original affidavit had been returned to him. J.C. also testified that a rifle listed in the affidavit, which belonged to his girlfriend, had not been returned. But the state agreed at the hearing that the girlfriend would need to file a separate affidavit requesting restitution for the rifle, because the rifle did not belong to J.C. and J.C. cannot legally possess firearms.

J.C. also testified about the requested restitution for damage to the trailer. He requested a total of \$339 to replace a damaged door lock, tongue jack, fender, and lights, and \$500 to remove the white spray paint. He explained that he purchased the trailer over five years prior from a close friend, but that the title remained in the friend's name. J.C. and the friend had agreed not to change over the title because the friend had purchased a

¹ Stillwell could not have brought this challenge to the amended restitution order in his initial appeal because the restitution hearing was held, and the amended order was issued, after the deadline for direct appeal had passed. When a district court issues an order amending restitution, a party can appeal that decision from the amended sentence within 90 days of the order's entry. *State v. Borg*, 834 N.W.2d 194, 195 (Minn. 2013). We accordingly construe this appeal as properly taken from the amended restitution portion of Stillwell's sentence.

lifetime registration for the trailer. But J.C. testified that he had a bill of sale for the trailer and that he, not the friend, currently owned it.

The district court heard arguments following the testimony. Stillwell asserted, among other things, that J.C. should not be allowed to recover for damage to the trailer because he is not its titled owner.

In January 2020, the district court issued findings of fact, conclusions of law, and an order reducing the restitution amount from \$2,433 to \$1,639. According to the district court, the amended restitution amount reflects the cost of the ice auger (\$300), fishing spears (\$500), and trailer damage (\$839), and deducts the price of the returned icehouse and the rifle belonging to J.C.'s girlfriend from the original restitution order. As to ownership of the trailer, the district court reasoned that the registration issue raised by Stillwell was "more aligned with the tax authorities and the Department of motor vehicles," and that, for the purpose of restitution, the record sufficiently established J.C. as the trailer's owner.

This appeal follows.

DECISION

"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). The district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). Factual findings supporting a restitution order are reviewed for clear error. *Andersen*, 871 N.W.2d at 913.

But “[w]hether 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).

Minnesota law allows a crime victim “to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted.” Minn. Stat. § 611A.04, subd. 1 (2018). A victim includes “a natural person who incurs loss or harm as a result of a crime.” Minn. Stat. § 611A.01(b) (2018). To request restitution, a victim must provide the court with information describing their loss, including the total dollar amounts for all claims. Minn. Stat. § 611A.04, subd. 1. “A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime” *Id.* An offender may challenge restitution by filing a written request for a hearing within 30 days of receiving written notice of the restitution requested, or within 30 days of sentencing, whichever is later. Minn. Stat. § 611A.045, subd. 3(b) (2018).

In determining whether to order restitution and the amount of the restitution, the district court must consider: “(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.” *Id.*, subd. 1(a) (2018). The main purpose of restitution 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). The restitution statute accordingly has “broad language [that] gives the district court significant discretion” to compensate a victim for their losses. *Id.* The state has the burden of establishing the proper restitution amount and the appropriateness of restitution. Minn. Stat. § 611A.045, subd. 3(a); *State v. Terpstra*, 546 N.W.2d 280, 282

(Minn. 1996). “A dispute as to the proper amount or type of restitution must be resolved by the [district] court by the preponderance of the evidence.” Minn. Stat. § 611A.045, subd. 3(a).

Stillwell argues that the district court erred by awarding restitution to J.C. for the trailer damage because J.C. is not the trailer’s titled owner. By failing to rely on Minnesota’s statutory scheme regulating vehicle ownership, Stillwell contends, the district court allowed an unlawful user of a vehicle to recover restitution when only the vehicle’s legal owner should be permitted to do so.

The state responds that even though a vehicle’s title holder is the vehicle’s presumptive owner under Minnesota law, that presumption should not control the result in the context of restitution in criminal cases. The state contends that the presumption created by titling is intended to give notice as to the vehicle’s ownership to all interested parties in a commercial setting. *See Bank v. Soule*, 420 N.W.2d 598, 602 (Minn. 1988) (explaining that the legislature enacted Minn. Stat. ch. 168A in 1971 for the specific purpose of giving parties to a commercial transaction the right to rely on a vehicle’s title as establishing ownership). The state alternatively argues that, even if the district court erred by determining J.C. is the trailer’s owner, J.C. is still the victim of the crime and entitled to restitution for the repairs.

Stillwell’s reliance on the titled ownership of the trailer does not persuade us that the district court erred. The restitution statutes do not reference ownership, either in defining “victim” or in delineating the scope of permissible recovery. *See* Minn. Stat. §§ 611A.01(b), .04, subd. 1. A victim is simply a person who “incurs loss or harm as a

result of a crime.” Minn. Stat. § 611A.01(b). To recover for loss or harm, the victim must request recovery in compliance with Minn. Stat. § 611A.04, subd. 1. That statutory subdivision contains no requirement that the victim demonstrate titled ownership of the affected property. To the contrary, the restitution statute contains broad language because restitution is intended to restore victims to their pre-offense financial position. *Palubicki*, 727 N.W.2d at 666.

Although J.C. was not the title holder, the record supports the district court’s conclusion that J.C. owned the trailer, and was therefore a victim for the purpose of restitution. J.C. testified that he had purchased the trailer by executing a bill of sale over five years prior. J.C. and his friend, the title holder, agreed that J.C. would own the trailer, but that the title would remain in the friend’s name. In addition to J.C.’s testimony at the restitution hearing, the circumstances surrounding Stillwell’s offense indicated that J.C. owned the trailer. When the police found the trailer at Stillwell’s house, it was full of J.C.’s property. And it was J.C. who reported the trailer as stolen to the police. The totality of these facts supports the district court’s conclusion that it was J.C.—not his friend—who owned the trailer, and therefore J.C. was entitled to be restored to the position he was in before Stillwell’s offense. *See Palubicki*, 727 N.W.2d at 666. We accordingly hold that the district court did not abuse its discretion by awarding restitution to J.C. for the repair costs of the trailer.

Affirmed.