

*This opinion is nonprecedential except as provided by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
A22-1667**

State of Minnesota,
Respondent,

vs.

Laurssia Keyair Likness,
Appellant.

**Filed June 5, 2023
Affirmed
Reilly, Judge**

Isanti County District Court
File No. 30-CR-16-214

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

Jeffrey R. Edblad, Isanti County Attorney, Nicholas J. Colombo, Assistant County Attorney, Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's restitution order, arguing that the state failed to carry its burden to prove the amount of restitution by a preponderance of the evidence. We affirm.

FACTS

In 2012, appellant Laurssia Keyair Likness applied for cash and food assistance from the Minnesota Family Investment Program (MFIP), food assistance from the Supplemental Nutrition Assistance Program (SNAP), and Medical Assistance (MA) benefits. When she submitted her combined application to these programs, Likness indicated she received social security income. Likness also noted she did not have income from any other sources, or any vehicles, bank accounts, or cash. Her application was approved, and she received public assistance from the programs from August 2012 to February 2015.

At the time, as part of each program's ongoing disclosure requirement, Likness verified her continuing eligibility for the programs through various written forms and in-person interviews with eligibility workers from Isanti County Family Services (the county). Likness represented on all forms that she did not have income from any other sources, or any bank accounts, vehicles, or cash. And Likness orally confirmed the accuracy of her answers on the forms when she met with eligibility workers in-person.

In February 2014, the county discovered Likness had two Guaranty Bank accounts, vehicles, and cash income. After an investigation, the county determined that Likness failed to report income and assets that rendered her ineligible to receive public assistance from all three programs. Respondent State of Minnesota charged Likness with wrongfully obtaining public assistance in violation of Minn. Stat. § 256.98, subd. 1(1) (2014).

The district court held a bifurcated jury trial. The jury would first consider whether Likness was guilty and then—if they found her guilty—would consider whether her

defense of cognitive impairment would relieve her of criminal responsibility. During the guilt phase of the trial, the jury heard testimony from the county's fraud investigator and Likness. The investigator testified she met with Likness as her eligibility worker many times before the investigation. The investigator stated she reviewed statements from Likness's unreported bank accounts, which showed that Likness regularly made substantial unreported cash deposits. The investigator explained she added up the cash deposits Likness made each month to determine whether Likness exceeded the \$5,000 asset limit to qualify for MFIP assistance. The investigator also determined Likness exceeded the relevant income or asset limits for all three programs for some months between August 2012 and February 2015. She created a detailed report showing which months Likness was ineligible for each particular program and calculated the corresponding monthly overpayments. Ultimately, she determined Likness received a total overpayment of \$37,516.92.

Likness testified that she and some of her children received social security income. Likness explained that she would convert her social security checks into cash at another bank, use the cash to pay for her needs, and deposit the remaining cash into her Guaranty Bank accounts. Likness testified the cash deposits flagged by the investigator were "leftover" social security funds and denied lying about her assets to receive more money from public assistance. The jury found Likness guilty of the offense.

In the second phase of the trial, Likness presented evidence of her learning disabilities and difficulty understanding the public assistance forms. The state presented evidence from a psychologist who opined, based on multiple evaluations, that Likness

portrayed herself as being severely impaired but did not suffer from cognitive impairment at the time of the offense. The jury rejected Likness's cognitive-impairment defense.

The district court stayed the imposition of Likness's sentence and placed her on probation for ten years, ordering her to pay \$35,288.92 in restitution in \$50 monthly installments. The total amount ordered in restitution reflected the county's losses from each program as calculated by the investigator minus payments Likness had made by the time of sentencing: \$12,332 in MFIP, \$2,621 in SNAP, and \$20,335.92 in MA.

Likness appealed her conviction and argued the evidence was insufficient to prove beyond a reasonable doubt that she intended to defeat the purposes of all of the public assistance programs listed in the criminal statute, including those that did not apply to her. *State v. Likness*, No. A20-0108, 2021 WL 961116, at *1 (Minn. App. 2021) (order op.), *rev. denied* (Minn. Jan. 26, 2022). This court rejected Likness's sufficiency-of-the-evidence and statutory-interpretation arguments, affirming the district court's judgment of conviction. *Id.*

In November 2019, Likness filed a challenge to the amount of restitution asserted by the state and ordered by the district court. Likness did not contest the amount she owed corresponding to the overpayment of MFIP benefits. But Likness argued the state did not satisfy its burden to establish the amount overpaid in SNAP and MA benefits because (1) the investigator did not testify to the asset limits or income thresholds associated with the programs, and (2) the state did not establish Likness's income that rendered her ineligible. The district court denied Likness's restitution challenge and concluded the state's exhibits and the investigator's testimony showed by a preponderance of the

evidence that Likness was ineligible and received overpayment in SNAP and MA benefits in the amounts set forth by the state.

This appeal follows.

DECISION

The 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). We review the district court's factual findings for clear error, but review questions about the district court's authority to order restitution de novo. *Id.* Factual findings are clearly erroneous if, on the entire evidence, we are "left with the definite and firm conviction that a mistake occurred." *State v. Diede*, 795 N.W.2d 836, 846-47 (Minn. 2011).

A victim of a crime has the right to receive restitution if the offender is convicted. Minn. Stat. § 611A.04, subd. 1 (2018). This statutory right serves to restore victims to the financial positions they were in before the crime occurred. *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). When ordering restitution, the district court must consider the amount of economic loss sustained by the victim and the defendant's ability to pay. Minn. Stat. § 611A.045, subd. 1(a) (2018). Victims must describe the nature and amount of economic loss with "reasonable specificity" and the record must contain a factual basis for the restitution award. *State v. Keehn*, 554 N.W.2d 405, 408 (Minn. App. 1996), *rev. denied* (Minn. Dec. 17, 1996). When a defendant challenges the amount of restitution after it is awarded, the state has the burden of proving the amount by a preponderance of the

evidence. Minn. Stat. § 611A.045, subd. 3(a) (2018); *see also State v. Thole*, 614 N.W.2d 231, 235 (Minn. App. 2000).

Likness argues that the state failed to meet its burden to show the award was proper because the state did not establish the eligibility requirements for SNAP and MA generally and as applied to Likness. Indeed, the investigator only testified that an asset limit of \$5,000 applied to render Likness ineligible for MFIP. She did not specify the income guideline for SNAP and MA. But in denying Likness's restitution challenge, the district court did not adopt Likness's assertion that the income limits or guidelines must be stated on the record to conclude that Likness was ineligible for benefits and that restitution for overpayment was proper. Rather, the district court found that the investigator specified in her testimony that she used the relevant eligibility thresholds for each of the programs in her overpayment calculations. The district court found her "qualified explanation that [Likness] was not eligible" to be credible and the state's burden satisfied. The record supports these findings.

We will not disturb the district court's findings, including credibility findings, when there is "reasonable evidence" to support them. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008); *see also State v. Ali*, 855 N.W.2d 235, 245 (Minn. 2014) (noting an appellate court reviews a postconviction court's credibility determinations under the clearly erroneous standard's "high threshold"). The investigator testified she determined Likness's eligibility using "the asset limits . . . for the cash program, the food program, and the medical assistance program." She also testified Likness was sometimes "under the income guideline" and some months "over the income guideline" and provided a detailed

report showing which months Likness was ineligible for each particular program. The district court also credited the investigator's 14 years of experience as an eligibility worker. On these facts, there is reasonable evidence that the investigator used the SNAP and MA income guidelines to determine Likness's month-to-month eligibility for the programs and the district court did not clearly err in crediting the investigator's testimony.¹

Likness also contends the state did not satisfy its burden because it failed to prove she had income that rendered her ineligible for SNAP and MA. First, Likness argues the investigator failed to define what qualifies as income for program ineligibility. This contradicts the record. The investigator testified that "[a]ny money that you have access to is income for public assistance." The investigator also explained that loans and social security income did not count as income, but regular gifts do count.

Second, Likness contends the investigator failed to explain which of Likness's cash deposits were considered income for the ineligibility calculations. At trial, Likness posited two explanations for the regular, large cash deposits in her account: (1) "leftover" social security income, or (2) a gift from her child to pay a bill. Likness explained she would take

¹ To support her contention that the income guidelines must be specifically stated in the record, Likness asks this court to compare the investigator's testimony to the trial testimony of a county human-services representative in *State v. Malik*, No. A18-2003, 2020 WL 1845964, at *1 (Minn. App. Apr. 13, 2020), *rev. denied* (Minn. June 30, 2020). In *Malik*, the representative explained SNAP and MA eligibility depends on the applicant's income and specified the income amounts. *Id.* We note that nonprecedential opinions of this court are not binding authority. Minn. R. Civ. App. P. 136.01, subd. 1(c). Nor do we find *Malik* persuasive as it concerned whether the evidence was sufficient to sustain the defendant's criminal conviction for wrongfully obtaining public assistance. 2020 WL 1845964, at *8. While the testimony and evidence set forth in *Malik* may be better practice for a fully developed record on the issue, *Malik* is silent on whether the income guidelines used for ineligibility determinations must be explicitly stated when determining restitution.

her social security checks, cash them at a different bank, pay her expenses, and deposit the remaining amounts in her accounts. She also testified her daughter gave her cash only one time to pay a bill. Likness argues the state did not meet its burden of proving that these cash deposits were income rather than social security income, a loan, or irregular gifts. We disagree.

In determining that the state satisfied its burden to prove Likness was ineligible for public assistance, the district court again credited and relied on the investigator's testimony. The district court found the investigator "provided a detailed explanation why the deposits into [Likness's] bank account qualified as unearned income . . . and would not be [her] [s]ocial [s]ecurity disbursements." The investigator explained she reviewed Likness's bank statements and "added up all cash deposits, just the cash deposits, each month" and classified them as income for her calculation rather than "leftover" social security income that could not be considered.

While the investigator conceded that some deposits could have been "leftover" from social security, she also testified that Likness's social security checks amounted to about \$1,900 per month and Likness had to pay over \$1,275 in monthly rent and utility expenses before she could deposit any cash remainder. Likness's explanation that these funds were social security funds conflicts with the amounts she deposited. The state's exhibit summarizing Likness's cash deposits showed her purported "leftover" social security funds totaled over \$1,000 in 25 of the 34 months she received public assistance. On these facts, we are not "left with the definite and firm conviction that a mistake occurred" and

reasonable evidence supports the district court's finding that Likness's cash deposits qualified as income. *Diede*, 795 N.W.2d at 846-47.

Ultimately, Likness asserts the district court could not rely on the investigator's ineligibility conclusions because she "failed to explain her math" and "there is no way to fact check" her determinations absent information on what income guidelines applied and absent proof the cash deposits were income. Even if there may not be enough information in the record to independently perform the investigator's calculations to confirm their accuracy, the district court did not err in concluding the state satisfied its statutory burden. "[T]he record must provide a factual basis for the amount awarded by showing the nature and amount of the losses with reasonable specificity." *Thole*, 614 N.W.2d at 234. The amount of restitution must be shown by a preponderance of the evidence. Minn. Stat. § 611A.045, subd. 3(a); *see also State v. Garcia*, 927 N.W.2d 338, 344 (Minn. App. 2019) ("A preponderance of the evidence exists when it is more probable than not that a fact exists.").

Taking together, the investigator's (1) credible testimony that she applied SNAP and MA income guidelines, (2) explanation of what funds constitute income for eligibility determinations, (3) conclusion that Likness's cash deposits were income, and (4) detailed report setting forth the months of ineligibility for each program with corresponding overpayments, we are satisfied that it is more probable than not Likness was ineligible, at times, for SNAP and MA benefits. And the investigator's detailed report on the resulting overpayments shows each program's "amount of . . . losses with reasonable specificity." *Thole*, 614 N.W.2d at 234. As a result, the district court did not err in determining the state

carried its burden and did not abuse its discretion in ordering restitution in the amounts set forth by the state.

Affirmed.