

*This opinion is nonprecedential except as provided by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
A24-0297**

State of Minnesota,
Respondent,

vs.

Devon James Block,
Appellant.

**Filed September 3, 2024
Affirmed
Smith, Tracy M., Judge**

Crow Wing County District Court
File No. 18-CR-22-3293

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's sentence for felony theft, appellant argues that the district court erred by awarding restitution for one item of missing property and requiring appellant to bear the burden of proving his inability to pay restitution. We affirm.

FACTS

The following facts were established at Block's plea and restitution hearings. Sometime between August 30 and September 1, 2022, Block broke into and stole items from a storage unit in Brainerd, Minnesota. Another person, who is not identified in the record, accompanied Block during the theft. The renter of the storage unit had kept a variety of items in the unit, including a cooler, ice augers, and tires. The renter's spouse had also stored a ring in the storage unit.

On September 5, 2022, the renter of the storage unit discovered that it had been broken into and filed a police report, along with a list of missing items. The ring was not listed in this initial report. Three days later, the renter and the renter's spouse took inventory of their storage unit and determined that the ring was gone. In an email to the police, they reported the ring as a missing item. In October 2022, the renter submitted an affidavit for restitution listing the stolen items, including the ring, with a total requested amount of \$5,150. The renter's insurer adjusted the estimate of the total loss to be \$5,771.32 and covered about half of the loss.

In August 2023, Block pleaded guilty to felony theft in violation of Minnesota Statutes section 609.52, subdivision 2(a)(1) (2022). At the plea hearing, Block admitted to stealing several items, but not the ring, and the district court ordered Block to pay \$5,771.32 in restitution, subject to Block's right to challenge the amount. Block requested a restitution hearing and challenged both the amount of restitution claimed and his ability to pay the restitution award.

Following an evidentiary hearing in which the renters and Block testified, the court found that the restitution amount was correct and that Block had an ability to pay. The district court ordered Block to pay the full amount of restitution as estimated by the insurer.

Block appeals.

DECISION

Block argues that the district court abused its discretion by (1) erroneously awarding restitution for the loss of the ring and (2) requiring Block to meet a burden to prove his inability to pay. 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). A district court abuses its discretion when its decision regarding restitution is based on an erroneous interpretation or application of the law. *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019).

By statute, “[a] victim of a crime has the right 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(a) (2022). When awarding restitution, a district court must consider both “the amount of economic loss sustained by the victim as a result of the offense” and “the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2022).

Restitution for the Ring

Block argues that the district court abused its discretion in awarding restitution for the ring because (1) it awarded restitution without finding that Block stole the ring and such a finding would be without a factual basis, (2) it erred by holding him responsible

under a joint-and-several-liability theory because the person who accompanied him during the theft was never charged and there is no factual basis that she stole the ring, and (3) there is no other factual basis for determining that the loss of the ring was directly caused by or followed naturally as a consequence of his burglary. We are unpersuaded.

The district court determined as follows:

[Block] argues that he should not be responsible for restitution related to the ring. [Block] maintains that he did not steal a ring, nor did he ever see a ring in with the items that were stolen. However, [Block] acknowledged that he had an accomplice during the burglary, and that he is uncertain as to whether the accomplice took the ring. [Block] also argues the [victims'] contradictory testimony raises an issue of credibility on whether the ring was in the storage unit or not.

. . . .

The Court has considered the testimony provided by [the victims] and, although there were some contradictions in who realized the ring was missing and when, the Court finds the overall testimony credible. Regardless of which person noticed the ring missing first, the ring is missing. Further, [Block's] role in the burglary, whether he stole the ring or the accomplice did, or even if the ring was somehow lost in the burglary process, makes him liable for the economic loss sustained by the victims. The record supports that [Block] stole items from the [victims'] storage unit. What items were removed from the unit by [Block] and what items were removed by the accomplice are indistinguishable for this purpose. . . . As such, [Block] is jointly and severally liable for any restitution amount that is ordered.

Block argues that the restitution award for the ring lacks a factual basis because the record does not establish that either he or his companion took the ring or that the ring was taken during the theft at all. He emphasizes that he testified that he did not take the ring, that he never testified that his companion took the ring, and that the victims provided

evidence only that the ring was placed in the storage unit months before the theft and was not in the unit a week after the theft.

To qualify for restitution, a loss must be “directly caused by, or follow naturally as a consequence of, the defendant’s crime.” *Boettcher*, 931 N.W.2d at 381. When the offender challenges a restitution award, the state has the burden of proving the amount of the victim’s loss. Minn. Stat. § 611A.045, subd. 3(a) (2022). “The record must provide the court with a factual basis to award restitution.” *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014).

Here, the district court found credible the victims’ testimony that the ring was in the storage unit and that they discovered it missing a week after the theft. Block admitted that he went to the storage facility with a companion, that he broke into and stole from the victims’ storage unit, and that his companion entered the storage facility during the theft. The district court implicitly found not credible Block’s testimony that neither he nor his companion stole the ring or caused its disappearance during the theft. The record supports the finding that the ring disappeared due to the theft.

Block argues, however, that the district court erred by determining him to be “jointly and severally liable” for the loss of the ring. “[W]hen a victim sustains indivisible loss from multiple defendants’ actions, the sentencing court has the authority to order restitution based on joint and several liability.” *Id.* at 66. Block argues that joint and several liability does not apply because his companion was never charged as an accomplice or found liable for restitution. It is true that the record does not establish that Block’s companion was charged with the theft or found liable for restitution. But, as described above, the record

supports the finding that the loss of the ring was directly caused by or was the natural consequence of Block's theft whether Block or his companion stole the ring or otherwise caused its disappearance during the theft. Therefore, the district court did not err by finding Block liable for restitution for the ring even if joint and several liability does not apply.

Ability to Pay

Block also argues that the district court abused its discretion by requiring him to meet a burden to prove his inability to pay.

Minnesota Statutes section 611A.045, subdivision 1(a)(2), states that “[t]he court, in determining whether to order restitution and the amount of the restitution, shall *consider* . . . the income, resources, and obligations of the defendant.” (Emphasis added.) In *State v. Wigham*, the supreme court concluded that the statutory requirement to “consider” was met when the district court “affirmatively take[s] into account the defendant’s ability to pay when awarding and setting the amount of restitution.” 967 N.W.2d 657, 663 (Minn. 2021). Block does not argue that the district court did not consider his ability to pay; rather, he contends that the district court improperly analyzed his ability to pay because it erroneously placed upon him the burden to prove that he was unable to pay restitution.

Block points to the district court’s discussion of the supreme court’s decision in *State v. Cloutier*, 987 N.W.2d 214 (Minn. 2023). In its order, the district court wrote that, in *Cloutier*, “[t]he defendant challenged the restitution, alleging that the State had failed to prove that he had the ability to pay,” and that the supreme court affirmed the restitution award, “holding that the defendant had the burden to prove that he did not have the ability pay restitution.” Block asserts that *Cloutier* did not hold that the defendant had the burden

to prove their inability to pay but rather concluded that no burden was to be imposed on either party. Block contends that the district court's characterization of *Cloutier* was erroneous and that the restitution order must therefore be remanded for reconsideration of his ability to pay.

Block is correct that the supreme court in *Cloutier* did not impose on the defendant a burden to prove inability to pay. In *Cloutier*, the supreme court rejected the argument that the state had the burden to prove the defendant's inability to pay, but it concluded that the restitution statute assigned no burden of proof. 987 N.W.2d at 222. Rather, the supreme court concluded, consistent with *Wigham*, that "the district court can fulfill its statutory mandate to consider a defendant's income, resources, and obligations in a process that assigns no party a burden of proof." *Id.*

"Any error that does not affect substantial rights must be disregarded." Minn. R. Crim. P. 31.01. The district court stated in its decision:

The Court has considered [Block's] ability to pay the requested restitution amount. [Block] has provided the Court with limited information relating to his income, resources, and obligations. It has been established that [Block] has limited assets, and limited income resources at this time; however, there are likely to be changes in [Block's] circumstances over the course of his probationary period, both as to income and expenses.

[Block] also indicated a plan to return to work and provided no reason he would not be able to work going forward. As such, though [Block] has a limited ability to pay at this time, the record indicates he is able to pay some amount toward restitution.

Even though the district court misstated the rule from *Cloutier*, we conclude, for two reasons, that the error did not affect Block's substantial rights. First, this analysis of Block's ability to pay does not mention whether Block had met a burden to prove his inability to pay. In fact, based on the information that Block provided, the district court recognized that Block had limited resources at the time, but it also recognized that Block planned to return to work. Second, the district court explicitly considered Block's ability to pay and therefore satisfied the requirements of Minnesota Statutes section 611A.045, subdivision 1(a)(2), and *Wigham*. Reversal is therefore not warranted based on the district court's incorrect statement of *Cloutier*'s holding regarding the burden of proof.

Affirmed.