

*This opinion is nonprecedential except as provided by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
A24-1783**

State of Minnesota,
Respondent,

vs.

Eugene Eillis Brown, Jr.,
Appellant.

**Filed August 25, 2025
Affirmed in part, reversed in part, and remanded
Bond, Judge**

Hennepin County District Court
File No. 27-CR-24-72

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bond, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant pleaded guilty to first-degree burglary of an occupied dwelling and agreed
to pay an unspecified amount of restitution as part of the plea agreement. Following a

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

contested restitution hearing, the district court ordered appellant to pay restitution for items that were stolen during the burglary and for economic losses associated with a trip to Florida that the victim had to cancel because of the burglary. In this appeal from the restitution order, appellant argues that the district court abused its discretion by ordering restitution for losses that were not the direct result of the burglary and by failing to consider appellant's ability to pay. We conclude that the district court did not abuse its discretion by determining that the victim's losses were a direct result of the burglary. But we conclude that the district court abused its discretion by failing to expressly consider appellant's ability to pay. Therefore, we affirm in part, reverse in part, and remand.

FACTS

In January 2024, respondent State of Minnesota charged appellant Eugene Eillis Brown, Jr. with first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a) (2022), which makes it a crime to enter an occupied dwelling without consent and either intend to commit a crime or commit a crime inside. The complaint alleged that, in August 2023, T.B. realized that her car keys, purse, credit cards, and cash were missing from her Minneapolis home and that her car was no longer parked on the street. T.B.'s roommate noticed that a backpack and credit card was also missing. That evening, police located T.B.'s car in Eagan; Brown was in the driver's seat and two females were in the passenger seats. Items belonging to T.B. and T.B.'s roommate were in the car and on Brown's person. In a *Mirandized* statement, Brown told police that he was "car shopping" in T.B.'s neighborhood and, after trying the handle on her car, discovered the car was unlocked.

Brown then looked through an ajar door into T.B.'s home and saw items of value inside. Brown entered the home, took various items, and left in T.B.'s car.

In February 2024, Brown agreed to plead guilty to first-degree burglary. The plea agreement provided that, in exchange for his guilty plea, the state would dismiss felony charges in two other cases and would agree to a 39-month prison sentence, which was a downward durational departure. The plea agreement also called for Brown to pay restitution, the specific amount of which was reserved.

During the plea colloquy, Brown testified that he was looking in cars parked on the street when he saw a home with a slightly open door. He saw property worth taking inside and entered the home. Brown agreed that he took property from inside the home, “specifically . . . a backpack and some credit cards,” and that the next day he was “found in a car that was owned by one of the people from the residence.” Brown acknowledged that “by entering a home without permission, with the intent to commit a crime inside—specifically to steal things” while non-accomplices were present inside the home, he was guilty of first-degree burglary. The district court accepted Brown’s guilty plea and ordered a presentence investigation report (PSI).

Before sentencing, T.B. filed a claim and supporting documentation for \$5,284.29 in restitution. T.B.’s claim sought restitution for \$2,100 in missing cash, \$190 to replace T.B.’s passport, and \$2,581.12 for the cost of nonrefundable airfare and hotel reservation for an upcoming trip to Florida that T.B. was unable to take because her identification had been stolen. T.B. also claimed restitution for the cost of replacing the locks on her house and garage, towing her car, and various car repairs.

A sentencing hearing was held on March 11. The district court sentenced Brown to 39 months in prison and ordered him to pay \$5,284.29 in restitution. Brown told the district court that, while he agreed that he was responsible for restitution, he “may challenge the number.” That same day, the district court issued both a sentencing order and a restitution order. The court did not check the box indicating that it had considered the defendant’s income, resources, and obligations on either order.

Brown timely challenged the restitution award and requested a contested restitution hearing. Brown subsequently filed an affidavit, in which he denied taking \$2,100 in cash, averred that T.B.’s passport was in her car when he was arrested, and contested the need to replace the home’s locks or tow the car. Brown also asserted that, because he was indigent and currently incarcerated, he lacked the ability to pay the full restitution amount. Brown indicated that he “would be willing to commit to pay \$1,500.00.”

At the contested restitution hearing, T.B. testified that the restitution claim she submitted accurately itemized the losses she sustained as a result of the August 3 burglary. T.B. explained that the \$2,100 in cash was money she had been saving for the Florida trip that she had been scheduled to take on August 9. T.B. testified that the police told her that a large amount of cash was on Brown when he was arrested, and none of the missing cash was ever returned to her. T.B.’s passport and state identification were stolen, and she spent \$190 to replace her passport. Because her identification was stolen, T.B. had to cancel her upcoming trip and she was unable to obtain a refund for the hotel and plane fare. T.B. testified that because both her and her roommate’s keys were stolen, she had to change the

locks. Finally, T.B. testified that she paid \$150 to the company that towed her car and she incurred additional expenses on car repairs.

Brown also testified at the contested restitution hearing. Brown testified that he saw T.B.'s passport, state identification, and credit cards in a small backpack in the car and that those items were still in the car when he was arrested. Brown further testified that the car was undamaged and in the same condition as when he took it. Brown denied taking any cash during the burglary and testified that the cash found on him when he was arrested was from a part-time job.

The district court issued a written order granting restitution in the amount of \$5,104.29. The district court credited T.B.'s testimony that T.B.'s "purse, car keys, identification card, passport, credit cards and cash were taken during the burglary." The district court determined that the missing cash, passport replacement, hotel and plane ticket costs, and new locks were out-of-pocket losses T.B. sustained as a direct result of the burglary. But the district court declined to award restitution for repairs to T.B.'s car, determining that there was insufficient information to conclude that the damage to the car was the result of the burglary. The court expressly found Brown's testimony not credible.

Brown appeals.

DECISION

Brown contends that the district court abused its discretion by ordering restitution for losses that were not directly caused by the burglary, and by failing to consider Brown's ability to pay when determining restitution. The victim of a crime "has the right to receive restitution" from a convicted offender as part of the disposition of a criminal charge. Minn.

Stat. § 611A.04, subd. 1(a) (2022). “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).

We review the district court’s decision to award restitution for an abuse of discretion. *State v. White*, 13 N.W.3d 395, 398 (Minn. 2024). “A [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.” *State v. Currin*, 974 N.W.2d 567, 571 (Minn. 2022) (quotation omitted). We will not disturb a district court’s findings of fact unless they are clearly erroneous. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). But whether the district court has the authority to order restitution or whether it fulfilled its statutory obligations are questions of law that we review de novo. *Id.*; see also *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021).

I. The district court did not abuse its discretion by ordering Brown to pay restitution for the missing cash, passport replacement, and canceled airfare and hotel reservation.

Brown argues that the district court abused its discretion by ordering him to pay restitution to T.B. for \$2,100 in lost cash, \$190 to replace T.B.’s passport, and \$2,581.12 for the cost of the canceled airfare and hotel reservation. Brown maintains that those losses were not directly caused by the burglary.

To determine “whether to order restitution” and “the amount of the restitution,” a district court must consider “the amount of economic loss sustained by the victim as a result of the offense.” Minn. Stat. § 611A.045, subd. 1(a) (2022). “A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime.” Minn.

Stat. § 611A.04, subd. 1(a). District courts “may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019). Under *Boettcher*, restitution is not authorized merely because a victim’s losses “have some factual relationship to the crime of conviction.” *Id.* (quotation omitted); *see also Palubicki*, 727 N.W.2d at 667 (stating that restitution is proper so long as it is not “so attenuated in its cause that it cannot be said to result from the defendant’s criminal act”).

When the offender challenges a restitution award, the state has the burden of proving the amount of the victim’s loss and the appropriateness of the restitution award. 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).

Brown pleaded guilty to first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a), for entering T.B.’s home without consent and either intending to commit a crime or committing a crime inside. T.B. testified at the restitution hearing that her purse, car keys, identification card, passport, credit cards, and cash were taken during the burglary. The district court found T.B.’s testimony credible. And the district court expressly found Brown’s testimony to the contrary—for instance, that he did not take any cash during the burglary—not credible. “Appellate courts defer to district court credibility determinations.” *State v. Alexander*, 855 N.W.2d 340, 344 (Minn. App. 2014). Thus, we conclude that the district court acted well within its discretion when it determined that T.B.’s out-of-pocket losses of \$2,100 in missing cash and \$190 to replace T.B.’s passport

were “directly caused by” Brown’s theft of the cash and passport during the burglary of T.B.’s home, the crime for which he was convicted. *See Boettcher*, 931 N.W.2d at 381.¹

We also conclude that the district court did not abuse its discretion by determining that the airfare and hotel expenses associated with the canceled Florida trip resulted directly from the burglary. The district court credited T.B.’s testimony that, because her passport and identification card were stolen during the burglary, she was unable to take the planned trip to Florida. T.B. tried to cancel her flight and hotel reservation but, because of the type of ticket she purchased and because the trip was less than one week away, she was unable to do so. “[T]he restitution statute’s broad language gives the district court significant discretion to award restitution for a victim’s expenses.” *Palubicki*, 727 N.W.2d at 666; *see also State v. Tenerelli*, 598 N.W.2d 668, 669, 672 (Minn. 1999) (upholding restitution award for costs incurred by victim of assault associated with traditional Hmong healing

¹ The state appears to suggest that *Boettcher*’s direct-causation standard does not apply in guilty-plea cases. In a footnote, the supreme court in *Boettcher* noted:

In this case, the restitution order followed a jury trial, not a guilty plea. Principles that apply to criminal restitution in guilty-plea cases, *see, e.g., State v. Kennedy*, 327 N.W.2d 3, 4 (Minn. 1982) (allowing the defendant to agree to pay restitution for the losses of victims not named in complaint in exchange for dismissal of charges), are inapplicable.

Boettcher, 931 N.W.2d at 381 n.5. We interpret this footnote to mean that the direct-causation standard does not preclude a defendant from agreeing to pay restitution for losses that the offense of conviction did not directly cause, as the defendant in *Kennedy* agreed to do. Here, however, Brown did not agree to pay restitution for specific losses or for a specific amount. And despite its suggestion, in both its brief and at oral argument, the state argued that *Boettcher*’s direct-causation standard applies and that the restitution award meets that standard.

ceremony). T.B.’s inability to take her planned trip to Florida was a direct result of, and flowed naturally from, Brown’s conduct of stealing T.B.’s passport and state identification during his burglary of her home. *See Boettcher*, 931 N.W.2d at 381.

Relying on *Boettcher*, Brown argues that the missing cash, replacement passport, and canceled airfare and hotel reservation are too attenuated to have been directly caused by the crime of conviction. In *Boettcher*, the state charged the defendant with burglary and arson involving a cabin in northern Minnesota. *Id.* at 377-78. The jury found Boettcher guilty of burglary but could not reach a verdict on the arson charge. *Id.* at 379. The district court accepted the partial verdict, and the state did not retry Boettcher for arson. *Id.* The district court ordered Boettcher to pay for fire damages as part of the restitution award. *Id.* On appeal, this court affirmed the restitution award because there was a “factual relationship” between Boettcher’s burglary and the fire damage. *Id.* at 380. The supreme court, after clarifying that restitution may only be ordered for losses that are directly caused by the offense, reversed and remanded. *Id.* at 379-80.

On remand, we reversed the district court’s restitution order. *State v. Boettcher*, No. A17-1426, 2019 WL 5884557, at *2 (Minn. App. Nov. 12, 2019).² We reasoned:

Boettcher was convicted of entering the cabin without consent and with intent to commit theft . . . Thus, he could be ordered to pay restitution for any economic losses incurred through forcing entry into the cabin or theft because those losses would have followed naturally from the crime of which he was convicted. But, even if they are factually connected, economic losses resulting from the fire damage here are too attenuated from the crime of which Boettcher was actually convicted

² We cite nonprecedential opinions as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

because they “cannot be said to result from [Boettcher’s] criminal act” of entering a dwelling without consent and with intent to commit theft.

Id. (alteration in original) (quoting *Boettcher*, 931 N.W.2d at 381).

The facts of this case are materially different than those present in *Boettcher*. Brown was convicted of first-degree burglary for entering T.B.’s home without consent with the intent to steal. The district court ordered Brown to pay restitution not for losses resulting from separate criminal conduct that the jury did not convict him for, but, rather, for the losses caused by the burglary to which he pleaded guilty. The record includes T.B.’s credible testimony and supporting documentation that her cash, identification, and other items were stolen during the burglary and, as a direct consequence of those items being stolen, she had to replace her passport and cancel her upcoming trip. Unlike the losses from the arson in *Boettcher*, the record evidence supports the district court’s determination that T.B.’s losses were “directly caused by, or follow[ed] naturally as a consequence of” Brown’s burglary. *Boettcher*, 931 N.W.2d at 381.

Brown maintains that his restitution obligation should be limited by the plea agreement’s factual basis which, Brown argues, only established that Brown entered T.B.’s home without consent and took “a backpack and some credit cards.” Brown asserts that, because he did not admit taking the cash or identification, and because the record does not conclusively establish that those items were in the backpack that Brown took, those losses were not directly caused by the burglary. The state disagrees, arguing that, because Brown pleaded guilty to the offense of entering T.B.’s home with the intent to steal and T.B. provided credible testimony at the restitution hearing about the extent of her losses from

the burglary, restitution is not limited to the items that Brown expressly admitted stealing. We agree with the state.

As we have explained, the offense of first-degree burglary, as applicable here, is established by evidence that a person entered an occupied dwelling without consent and intended to commit a crime or committed a crime inside the dwelling. Minn. Stat. § 609.582, subd. 1(a). When Brown pleaded guilty, he admitted that he committed first-degree burglary “by entering a home without permission, with the intent to commit a crime inside—specifically to steal things.” While Brown agreed with his counsel’s question that he took property from inside T.B.’s home, “specifically . . . a backpack and some credit cards,” the plea colloquy does not indicate that Brown *only* stole a backpack and credit cards.

We discern no language in either the burglary statute or the restitution statute that limits restitution to losses the defendant specifically admits during the plea colloquy to causing. Instead, the applicable legal standard requires that the losses be “directly caused by, or follow[ed] naturally as a consequence of” the offense. *Boettcher*, 931 N.W.2d at 381. At the guilty plea hearing, Brown admitted that he committed the offense of first-degree burglary by entering T.B.’s home with intent to steal in violation of Minn. Stat. § 609.582, subd. 1(a). And at the restitution hearing, T.B. provided documentation and testimony, credited by the district court, that her purse, identification card, passport, credit cards and cash were taken during the burglary. We conclude that the stolen cash, replacement passport, and unused hotel reservation and plane fare were losses directly

caused by Brown's burglary and, therefore, the district court acted within its discretion by ordering Brown to pay restitution for those items.

II. The district court abused its discretion by failing to expressly consider Brown's ability to pay.

Brown argues alternatively that the district court erred by failing to expressly consider his ability to pay restitution. A district court generally has broad discretion to issue a restitution order, but that discretion "is constrained by the statutory requirements set forth in Minn. Stat. § 611A.045." *Wigham*, 967 N.W.2d at 662. Minn. Stat. § 611A.045, subd. 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." A district court fulfills its statutory duty to consider a defendant's income, resources, and obligations "when it expressly states, either orally or in writing, that it considered the defendant's ability to pay." *Id.* at 664. Whether the district court fulfilled its statutory obligation to consider the defendant's ability to pay restitution is a question of law that we review de novo. *Id.* at 662.

Brown agreed to pay an unspecified amount of restitution as part of his plea agreement. But Brown contested the amount of restitution and submitted an affidavit to the district court stating that he was indigent, incarcerated, and did not have the ability to pay the full amount of restitution originally ordered. In the PSI, Brown reported that he struggled to find work due to his criminal record, that his main source of income was selling drugs, and that he had outstanding financial obligations. Following the contested restitution hearing, the district court ordered Brown to pay \$5,104.29 in restitution to T.B.

but did not “expressly state[], either orally or in writing, that it considered [Brown’s] ability to pay.” *Id.* at 664.

The state acknowledges that the district court did not expressly consider Brown’s ability to pay and did not check the box on the restitution orders indicating that the court “has considered the income, resources, and obligations of the defendant.” The state argues that a district court is not required to consider a defendant’s ability to pay when restitution is an express term of the parties’ plea agreement.

In a precedential opinion issued after the briefing in this case, we rejected this argument. In *State v. Baker*, the defendant agreed to plead guilty to first-degree manslaughter and to pay restitution, though the agreement did not specify a precise amount. *State v. Baker*, ___ N.W.3d ___, ___, 2025 WL 1153156, at *1 (Minn. App. Apr. 21, 2025). At sentencing, Baker agreed to pay restitution to the victim’s family but asked the district court to consider his lack of financial resources. *Id.* The district court determined that, by agreeing to pay restitution as part of his plea agreement, Baker waived his right to contest his ability to pay. *Id.* We reversed and remanded, concluding that *Wigham* and Minn. Stat. § 611A.045, subd. 1(a)(2), require the district court to expressly consider a defendant’s ability to pay, even when payment of an unspecified amount of restitution is a term of the plea agreement. *Id.* at *3. *Baker* is dispositive here. Thus, Brown’s agreement to pay restitution as part of the plea agreement did not relieve the district court of its statutory obligation to consider Brown’s ability to pay the amount of restitution ordered.

The district court abused its discretion when it failed to expressly consider Brown’s income, resources, and obligations in awarding restitution. *Id.* Therefore, we reverse and

remand for the district court to expressly consider, pursuant to Minn. Stat. § 611A.045, subd. 1(a)(2), Brown's ability to pay \$5,104.29 in restitution to T.B.

Affirmed in part, reversed in part, and remanded.