

*This opinion is nonprecedential except as provided by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
A25-0267**

State of Minnesota,
Respondent,

vs.

Curtis AJ Harrell,
Appellant.

**Filed August 25, 2025
Reversed
Bratvold, Judge**

Sherburne County District Court
File No. 71-CR-21-1686

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

Dawn R. Nyhus, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Evan A. Ottaviani, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this sentencing appeal following a conviction for fourth-degree assault, appellant argues that the district court abused its discretion when it awarded \$2,309.77 in restitution.

Because the district court’s restitution order relied on facts not introduced into evidence at the restitution hearing, we reverse.

FACTS

In November 2021, respondent State of Minnesota charged appellant Curtis AJ Harrell with fourth-degree assault under Minn. Stat. § 609.2231, subd. 3(2) (2020), and first-degree damage to property under Minn. Stat. § 609.595, subd. 1(4) (2020). The complaint alleged that Harrell threw liquid feces at L.S., an employee of the Sherburne County Jail, on November 15, 2021, hitting L.S. and causing property damage.

In April 2022, the Minnesota Counties Intergovernmental Trust (MCIT) filed a restitution affidavit. The affiant averred that MCIT is “a joint risk sharing pool that provides workers’ compensation coverage for the employer Sherburne County,” MCIT made payments for “personal injuries to an employee of the County,” and Harrell caused the employee’s injuries. The affiant attested that MCIT paid \$659.51 for the employee’s medical expenses and “[o]ther [e]xpenses” and attached an itemized list of expenses.

Before trial, Harrell reached a plea agreement with the state in which Harrell agreed to plead guilty to fourth-degree assault and to pay restitution in an amount to be determined. In exchange for the guilty plea, the state agreed to dismiss the property-damage charge. The parties also agreed that Harrell would pay restitution for the damaged property. At a plea hearing, Harrell’s attorney offered the plea petition and Harrell pleaded guilty to fourth-degree assault, waived his trial rights, and provided a factual basis to support the guilty plea. The district court deferred acceptance of Harrell’s plea and scheduled a sentencing hearing.

On January 19, 2024, a representative from the Sherburne County Sheriff's Office submitted a restitution affidavit attesting that Harrell damaged a camera valued at \$960.00, a "remote speaker mic" valued at \$88.28, and two chairs valued at \$601.98; the total restitution requested was \$1,650.26. The sheriff's office attached a "project quotation" for the camera, a "quotation" for the remote speaker mic,¹ and a receipt for the two chairs, all of which matched the values listed in the affidavit.²

On January 29, 2024, the district court accepted Harrell's guilty plea, dismissed the property-damage charge, and sentenced Harrell to 22 months in prison. During the sentencing hearing, Harrell disputed restitution and requested a hearing. He challenged both his ability to pay and the amount of restitution. The district court scheduled a restitution hearing.

Harrell's attorney filed an affidavit on Harrell's behalf in which she averred, regarding the restitution request by the sheriff's office, that (1) the damage to the camera, remote speaker mic, and two chairs was "not a direct consequence of the crime for [which] he was sentenced"; (2) "the damage of the items did not render them unusable"; and (3) "the Sheriff's Office has not proven the value for the items requested is appropriate." As to the restitution request by MCIT, the affidavit stated that (1) MCIT "is not a victim"

¹ The project quotation for the camera is dated November 15, 2021, and states that the quote was "valid for 90 days" and that the price "may change thereafter." The quotation for the remote speaker mic states that the quote was valid through December 15, 2021, one month after the date the quote was issued.

² Probation prepared a presentence investigation that recommended a restitution amount of \$2,309.77 based on the amounts provided in the restitution affidavits.

and (2) MCIT's loss is not "a direct result of the crime for which Mr. Harrell was convicted."

At the restitution hearing in October 2024, the state offered testimony from the assistant jail administrator, who did not prepare the affidavit submitted in support of the request from the sheriff's office. The jail administrator agreed in his testimony that he was aware of the incident involving Harrell, was familiar with the sheriff's office's affidavit of restitution, and believed the attached documents were an "accurate reflection" of the cost to replace the damaged equipment. Harrell objected based on the witness's lack of personal knowledge. The district court overruled Harrell's objection.

The jail administrator testified that the camera was not operable because "liquid" was "inside of the internal parts" and it "sat in evidence" for "almost a year or two." He also testified that the remote speaker mic was damaged similarly. And he agreed that preserving evidence was standard procedure and added that the jail was not "able to clean" or "touch" these items while the trial was pending. He added that Harrell threw liquid feces near the two chairs and that the receipt attached to the affidavit showed the cost to replace the two chairs.

The state did not call any witnesses to testify about restitution for MCIT. The prosecuting attorney stated that "the receipts have been previously filed" and said, "I don't know that there's any challenge as to what the amounts were for or that they were valid expenses." The state did not offer any exhibits into evidence. Harrell did not offer any evidence.

During closing arguments, the prosecuting attorney argued that the restitution amount for the sheriff's office was the cost to replace the items damaged, reasoning that the electronics were "covered in liquid fecal matter" and could not be used "for very obvious reasons." The receipt documented the replacement chair cost; the prosecuting attorney urged that no evidence showed the two chairs "were functional" after Harrell's offense because they were "splashed by liquid feces."

Harrell's attorney argued, first, the jail administrator "has no personal knowledge of this actual event"; second, the state is not "allowed to just rest on the affidavits that were previously submitted," the state offered no testimony or exhibits showing "dollar amounts," and therefore, the state failed to prove the amount of restitution at the hearing; third, the state failed to offer any evidence of MCIT's damages or prove that MCIT was a victim; and fourth, the electronic items were damaged by storage and no evidence showed otherwise. The district court took the matter under advisement.

The district court issued a restitution order, awarding a total of \$2,309.77 in restitution: \$1,650.26 to the sheriff's office and \$659.51 to MCIT. The district court's order set out (1) factual findings describing events leading to the state's charges; (2) the procedural history, including the plea petition, sentencing order, and restitution affidavits; and (3) the jail administrator's testimony. The district court found that the affidavit from the sheriff's office stated that the "restitution amount is \$1,650.26," including "\$960 to replace" the camera, "\$88.28 for the remote speaker mic, and \$601.98 to replace" the two chairs. The district court determined that the MCIT affidavit sought restitution of \$659.51, which included "\$574.91 to Mercy Hospital and \$80.40 to Emergency Physicians

Professional Association, and \$4.20 in other expenses.” The district court also found that the jail administrator “stated he was aware of the items that came in contact with the liquid feces,” including the camera, which “was struck by the liquid feces” and “remained in evidence for two (2) years without an attempt at cleaning.” Finally, the district court found that the jail administrator “stated he had seen the Purchase Order for the replacement of the items struck by the liquid feces.”

In its conclusions of law, the district court rejected each of Harrell’s arguments, acknowledging that Harrell argued that the jail administrator lacked personal knowledge and that the state did not offer any exhibits. The district court added: “[T]he State has provided a detailed Affidavit for Restitution that lists the price of the items requiring replacement on the same day as the incident. This affidavit provides the costs for the lost items.”

The district court also recognized that Harrell challenged whether his crime caused the damages and determined that “[t]he inoperability of electronic equipment from an intrusion of liquid follows naturally as a consequence of Mr. Harrell throwing liquid at L.S. and hitting the items.” And “[t]he same reasoning applies to MCIT’s restitution request.”

Harrell appeals.

DECISION

“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) (2024). Restitution “may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs.” *Id.*

“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). “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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Appellate courts review a district court’s factual findings for clear error and questions of law de novo. *Andersen*, 871 N.W.2d at 913.

“At the sentencing, dispositional hearing, or hearing on the restitution request, the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts.” Minn. Stat. § 611A.045, subd. 3(a) (2024). When a defendant challenges restitution, the dispute “must be resolved by the court by the preponderance of the evidence” and “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.” *Id.*

Harrell raises four issues on appeal, arguing that (1) the district court abused its discretion because its factual findings are based on “information not submitted at the hearing,”—the restitution affidavits and attached documents; (2) “the state failed to produce any evidence of the amount of economic loss” for the restitution to the sheriff’s office; (3) “the state failed to prove MCIT was a victim, failed to submit evidence of loss or harm to MCIT and failed to prove Harrell caused loss or harm to MCIT”; and (4) the district court improperly shifted the burden of proof.

The first issue is determinative here. Harrell argues that the district court’s factual findings are clearly erroneous because they are based on information provided in the restitution affidavits and attached documents, but the affidavits and documents were not offered or admitted into evidence at the restitution hearing. The state argues, by analogy to caselaw, that “the district court is not limited to evidence introduced at the restitution hearing.”

The Minnesota Rules of Evidence apply to restitution hearings, with one exception: “the foundation for admission of documentary evidence under Rule 803(6),” the hearsay exception for records of regularly conducted business activity, “may be provided by affidavit, or statements signed under penalty of perjury . . . in lieu of testimony.” Minn. R. Evid. 1101(c); *see* Minn. R. Evid. 803(6) (describing the exception to hearsay for records of regularly conducted business activity).

Minnesota Rule of Evidence 1101(c) was amended in 2019 “to clarify the applicability of the Rules of Evidence to criminal restitution and expungement hearings.” Minn. R. Evid. 1101 2019 comm. cmt. This amendment followed the Minnesota Supreme Court’s opinion in *State v. Willis*, 898 N.W.2d 642 (Minn. 2017), in which the supreme court “held that the Rules of Evidence apply to criminal restitution hearings.” *Id.* This amendment was “intended to ease the burden on victims presenting receipts for expenses, while also ensuring fair and accurate restitution awards.” *Id.*

The state had an opportunity to submit evidence at the restitution hearing, and the rules of evidence allow the use of affidavits to provide foundation for records of regularly

conducted business activity. Minn. R. Evid. 1101(c).³ At the restitution hearing, Harrell’s attorney cited rule 1101 and argued that the state failed to produce evidence, in part because the affidavits and related documents were not offered or admitted into evidence. Still, the state did not offer the affidavits or attached documents into evidence. We conclude that the district court abused its discretion by relying, in part, on the affidavits and attached documents, which were not received into evidence at the restitution hearing. Relatedly, the district court’s factual findings on the amount of loss are clearly erroneous because these findings are not supported by record evidence.

This conclusion aligns with our decision in *State v. Chestnut*. No A19-0684, 2020 WL 1676646 (Minn. App. Apr. 6, 2020).⁴ Chestnut pleaded guilty to fourth-degree assault of emergency medical personnel, and at the sentencing hearing, the state presented a victim-impact statement from the physician, who stated 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.” *Id.* at *1. The district court ordered Chestnut to pay \$2,500 in restitution. *Id.* Chestnut challenged this amount, arguing, among other things, that “he did not cause the physician to lose her earrings.” *Id.* At the restitution hearing, the state did not call any witnesses or offer any evidence and instead “relied on the victim-impact statement

³ We need not decide whether the affidavits or attached documents were admissible because the issue was not raised in this appeal.

⁴ “Nonprecedential opinions are not binding but may be cited as persuasive authority.” *State v. Monyak*, 14 N.W.3d 210, 215 n.2 (Minn. App. 2024) (quotation omitted). *Chestnut* is persuasive because it addresses an issue like the one raised here. 2020 WL 1676646, at *1-2.

and the pre-sentence investigation report.” *Id.* The district court “denied Chestnut’s challenge with respect to the physician’s earrings” and awarded restitution for the lost earrings. *Id.* at *2.

Chestnut argued on appeal that “the state did not introduce any evidence to prove the physician’s financial loss” and that “the district court relied on inadmissible hearsay statements in the victim-impact statement and the pre-sentence investigation report.” *Id.* The state conceded error and acknowledged that the district court’s reliance on documents not received as evidence conflicts with the holding in *Willis* that the Minnesota Rules of Evidence apply to restitution hearings. *Id.* (citing *Willis*, 898 N.W.2d at 648). This court determined that the district court erred by relying on documents not received into evidence and reversed. *Id.* at *2-3.

We acknowledge that, here, unlike in *Chestnut*, the state does not concede error. The underlying reasoning for the state’s concession and this court’s conclusion in *Chestnut* is still persuasive. The state argues that the “the district court is not limited to evidence introduced at the restitution hearing.” But considering documents not received into evidence conflicts with *Willis* and the Minnesota Rules of Evidence. *Id.* at *2.

The state urges that, “[a]lthough the State did not offer that affidavit during the [restitution] hearing,” the jail administrator “incorporated those documents in his testimony to confirm that the price quotes and receipt accurately reflected the actual cost to replace those items.” We disagree because the record does not support the state’s assertion. Indeed, the transcript of the restitution hearing includes no evidence of the value of the camera, remote speaker mic, or two chairs. The jail administrator testified and agreed that these

items were damaged and that the amounts listed on the quotation documents attached to the affidavit were “accurate.” But the jail administrator did not testify to a dollar amount as the value of any of these items. The state does not cite authority for its assertion that a witness incorporates a document into the record by testifying that the document is accurate. To allow incorporation of a document in this way would dilute the state’s burden of proof and production at the restitution hearing. *See* Minn. Stat. § 611A.045, subd. 3(a).⁵

We are not persuaded by the caselaw on which the state relies. First, the state cites two cases in which the district court considered a victim-impact statement when deciding restitution. In *State v. Tenerelli*, the district court “noted for the record that a victim impact statement had been submitted to the court” and “read the portion of the victim impact statement . . . into the hearing record.” 598 N.W.2d 668, 670 (Minn. 1999). *Tenerelli* does not support the state’s argument that the district court can consider documents not admitted as evidence at the restitution hearing because the district court in *Tenerelli* considered a victim-impact statement read into the record at the restitution hearing. *Id.* In *State v. Anderson*, this court considered a victim-impact statement when reviewing a district court’s restitution award issued without a contested hearing. 507 N.W.2d 245, 247 (Minn. App. 1993), *rev. denied* (Minn. Dec. 22, 1993). The uncontested restitution award is unlike Harrell’s challenge to the restitution award, which required a contested hearing. *See* Minn. Stat. § 611A.045, subd. 3(b) (2024) (“An offender may challenge restitution . . . by requesting a hearing.”).

⁵ The state’s brief offers scant support for the MCIT restitution award, for which no testimony or other evidence was offered or received.

Second, the state cites our nonprecedential opinion in *State v. Camacho* to argue that a district court can consider any documents “within the court record,” even if they are not admitted into evidence. No. A20-0755, 2021 WL 1247953 (Minn. App. Apr. 5, 2021), *rev. denied* (Minn. June 29, 2021). Camacho challenged the district court’s restitution award for a victim’s medical treatment. *Id.* at *2. At the restitution hearing, the state provided testimony from the victim’s mother about the victim’s medical needs along with “the documents submitted with her restitution request,” which “showed her out-of-pocket expenses.” *Id.* On appeal, Camacho challenged “the mother’s testimony and the exhibits offered through her.” *Id.* at *6. This court concluded that “the district court did not abuse its discretion when it *received* mother’s restitution claim form, along with its many attachments.” *Id.* (emphasis added). Thus, *Camacho* does not support the state’s assertion that a district court may consider documents that are filed in the district court record but not admitted into evidence because the documents considered in *Camacho* were admitted into evidence at the restitution hearing. *Id.*

Because the district court’s restitution award relied on documents that were not admitted at the restitution hearing, we conclude that its findings on the amount of restitution were clearly erroneous, its order is “against logic and the facts in the record,” and the district court abused its discretion. *Hallmark*, 927 N.W.2d at 291 (quotation omitted). Thus, we reverse the restitution award and need not address Harrell’s three other arguments.

The parties dispute whether this court should remand for further proceedings. Harrell argues that the “state should not get a second bite at the apple, and the restitution

award should be reversed without remand.” The state argues that, “[i]f the Court is not satisfied with the district court’s order because it lacks specific factual analysis, it would be appropriate for this Court to remand for further factfinding.”

We addressed a similar issue in *Chestnut* and concluded that, because the district court’s error was based on the state’s failure to “introduce any evidence to prove the physician’s financial loss,” a remand was not appropriate. 2020 WL 1676646, at *2. This court accordingly reversed without a remand, reasoning that “the state should not have a second opportunity to satisfy its burden of persuasion.” *Id.* at *2-3.

The reasoning in *Chestnut* is persuasive here. At a contested restitution hearing, the state failed to introduce any evidence about the amount of the restitution sought on behalf of either the sheriff’s office or MCIT. A remand for the district court to make additional factual findings is not appropriate because the relevant documents were not offered or received into evidence. Like the state in *Chestnut*, the state at Harrell’s restitution hearing failed to meet its burden of persuasion and therefore should not be given “a second opportunity” to satisfy that burden. *Id.* at *2.

Reversed.