

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) S.CT. NO. 18-1763  
 )  
 EDDIE DELONG, )  
 )  
 Defendant-Appellant. )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR CHEROKEE COUNTY  
HONORABLE DAVID A. LESTER, JUDGE

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APPELLANT'S BRIEF AND ARGUMENT

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MARIA RUHTENBERG  
Assistant Appellate Defender  
MRuhtenberg@spd.state.ia.us  
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE  
Fourth Floor Lucas Building  
Des Moines, Iowa 50319  
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEY FOR DEFENDANT-APPELLANT

FINAL

## **CERTIFICATE OF SERVICE**

On the 29th day of August, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Eddie Delong, No. 6636503, Newton Correctional Facility, Box 218, 307 S. 60th Avenue, W., Newton, IA 50208.

APPELLATE DEFENDER'S OFFICE



**MARIA RUHTENBERG**

Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
[MRuhtenberg@spd.state.ia.us](mailto:MRuhtenberg@spd.state.ia.us)  
[appellatedefender@spd.state.ia.us](mailto:appellatedefender@spd.state.ia.us)

MR/lr/07/19  
MR/lr/08/19

**TABLE OF CONTENTS**

	<u>Page</u>
Certificate of Service .....	2
Table of Authorities.....	4
Statement of the Issues Presented for Review.....	5
Routing Statement.....	6
Statement of the Case.....	6
Argument	
I. THE TRIAL COURT ERRED BY ORDERING THE DEFENDANT TO MAKE RESTITUTION WITHOUT FINDING AN ADEQUATE CAUSAL CONNECTION BETWEEN THE RESTITUTION AND THE CRIME .....	9
Conclusion.....	15
Request for Nonoral Argument .....	15
Attorney’s Cost Certificate.....	15
Certificate of Compliance .....	16

## TABLE OF AUTHORITIES

<u>Case:</u>	<u>Page:</u>
State v. Bonnsetter, 637 N.W.2d 161 (Iowa 2001) .....	9
State v. Jenkins, 788 N.W.2d 640 (Iowa 2010) .....	10
State v. Klawonn, 688 N.W.2d 271 (Iowa 2004) .....	9
 <u>Statutes:</u>	
Iowa Code § 910.2 (2017) .....	9
Iowa Code § 910.1(4) (2017) .....	10

**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

**I. WHETHER THE TRIAL COURT ERRED BY ORDERING THE DEFENDANT TO MAKE RESTITUTION WITHOUT FINDING AN ADEQUATE CAUSAL CONNECTION BETWEEN THE RESTITUTION AND THE CRIME?**

**Authorities:**

State v. Klawonn, 688 N.W.2d 271, 271 (Iowa 2004)

State v. Bonnstetter, 637 N.W.2d 161, 165 (Iowa 2001)

Iowa Code § 910.2 (2017)

Iowa Code § 910.1(4) (2017)

State v. Jenkins, 788 N.W.2d 640, 645 (Iowa 2010)

## **ROUTING STATEMENT**

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal from a restitution order in Cherokee County Case number FECR025726.

**Course of Proceedings:** On April 14, 2017, the State charged the defendant, Eddie Delong, with Sexual Abuse in the Third Degree as a habitual offender in violation of Iowa Code sections 709.1(1), 709.4(1)(a), 709.4(1)(b)(1), 709.1(d), 903B.1 (2015), a class C felony in Count I, and Supplying Alcohol to a minor in violation of Iowa Code sections 123.47(1), 123.47(5) (2015), a serious misdemeanor in Count II. (Trial Information) (App. pp. 4-6). The matter was tried to a jury beginning November 28, 2017. (Trial tr. Vol. I, p. 1, L. 1-25). On November 30, 2017, the jury returned guilty verdicts on both counts. (Verdict) (App. pp. 7-8). On March 30, 2018, the court sentenced Delong on Count I to 15 years in prison with a 3 year mandatory

minimum and a suspended \$1,000.00 fine. (Sentencing Order) (App. pp. 9-18). The defendant appealed the conviction in a separate appellate action.

On April 19, 2018, the parties requested a hearing regarding restitution. (Motion for Restitution Hearing) (App. p. 19). A hearing was held on June 22, 2018.<sup>1</sup> (Restitution Hrg. tr. p. 1, L. 1-25). On September 12, 2018, the court ordered that the defendant pay the full amount of restitution requested. (Restitution Order) (App. pp. 20-27). The defendant filed a notice of appeal from that order on October 12, 2018. (Notice of Appeal) (App. p. 28).

**Facts:** The defendant, Eddie Delong, was charged and convicted of providing the victim with alcohol and thereafter sexually abusing her. The victim, M.G., testified that she was on the couch in the defendant's living room after having drunk alcohol the defendant provided to her. (Trial tr. Vol. II, p. 38, L. 25 – p. 39, L. 1; p. 40, L. 3-8; p. 41, L. 19 – p. 42, L. 21).

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<sup>1</sup> The transcript of the restitution hearing mistakenly states that the hearing was held on October 29, 2018.

According to M.G., at some point Delong came up to her and started rubbing and squeezing her chest over her clothing. He put his hands down her pants and rubbed her vagina over her underpants. (Trial tr. Vol. II, p. 43, L. 1 – p. 44, L. 13).

According to M.G., Delong then pulled her pants down to above her knees. He saw her looking at him, he looked shocked, and then she fell asleep. (Trial tr. Vol. II, p. 45, L. 6-25). M.G. said she woke up the next day with vomit on her shoulder. She went to the bathroom and discovered her pants were on backwards and she had blood in her underwear. (Trial tr. Vol. II, p. 46, L. 5 – p. 47, L. 14). Her genitals were sore and still had a headache and a stomachache. (Trial tr. Vol. II, p. 47, L. 21 – p. 48, L. 12). A few weeks later, M.G. told her parents about what happened, and they contacted the police. (Trial tr. Vol. I, p. 63, L. 9-12; p. 66, L. 9-18). The defendant was later charged with abusing M.G. (Trial Information) (App. pp. 4-6).

Further relevant facts will be discussed below.



## ARGUMENT

### I. THE TRIAL COURT ERRED BY ORDERING THE DEFENDANT TO MAKE RESTITUTION WITHOUT FINDING AN ADEQUATE CAUSAL CONNECTION BETWEEN THE RESTITUTION AND THE CRIME.

**Preservation of Error and Standard of Review:** The defendant preserved error by challenging the restitution amount. (Motion for Restitution Hrg.; Restitution Hrg. tr. p. 1, L. 1 – p. 21, L. 1) (App. p. 19). Following the hearing, the court granted the State’s request for restitution. (Restitution Order) (App. pp. 20-27).

The appellate court reviews restitution orders for corrections of errors at law. State v. Klawonn, 688 N.W.2d 271, 271 (Iowa 2004). “When reviewing a restitution order, ‘we determine whether the court’s findings lack substantial evidentiary support, or whether the court has not properly applied the law.’” Id. (quoting State v. Bonnstetter, 637 N.W.2d 161, 165 (Iowa 2001)).

**Discussion:** Restitution is mandatory in all criminal cases in which there is a verdict of guilty. Iowa Code § 910.2 (2017).

Included in the definition of restitution is “payment of crime victim compensation program reimbursements.” Id. § 910.1(4). However, the district court may review crime victim compensation program “payments to determine whether there is a causal connection with the underlying crime as required by Iowa Code section 915.86 in order to determine the proper amount of a restitution order.” State v. Jenkins, 788 N.W.2d 640, 645 (Iowa 2010).

In this case there was not sufficient evidence to connect the amount of restitution claimed by the crime victim compensation program (CVCP) and the crime for which the defendant was convicted. The State filed a Statement of Pecuniary Damages requesting reimbursement to the CVCP for \$2,740.95. (State’s Ex. 15) (Conf. App. pp. 39-42).<sup>2</sup> Exhibit 15 summarizes the expenses the CVCP paid, including mileage, medical expenses, and counseling expenses. (State’s Ex. 15)

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<sup>2</sup> This document was also filed in the criminal case on 8/21/2017. However, to avoid confusion with other pecuniary statements filed, this brief will only refer to the two exhibits (State’s Exhibit 15 and 16) offered and accepted into evidence during the restitution hearing on June 22, 2018.

(Conf. App. pp. 39-42). State's Exhibit 16<sup>3</sup> is a collection of various documents regarding the charges for the items paid that are summarized in Exhibit 15. (State's Ex. 16) (Conf. App. pp. 43-69).

During the restitution hearing, the State called Ruth Walker, the restitution subrogation coordinator for the crime victim assistance division. (Restitution Hrg. tr. p. 3, L. 17-22). She testified they only pay expenses directly related to the crime. A compensation specialist reviews the submitted claims to determine if the claims are "crime related," and, if they are, the CVCP pays the claim. (Restitution Hrg. tr. p. 4, L. 23 – p. 5, L. 17).

Walker would not provide any details regarding how the expenses were related to the crime, despite the fact that some of the medical expenses were incurred 6 months after the crime was alleged to have been committed. The crime alleged in this

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<sup>3</sup> At the hearing the State told the court to disregard the first three pages of State's Exhibit 16, because they were not requesting to be reimbursed for those expenses. (Restitution Hrg. tr. p. 4, L. 7-10).

case occurred on July 1, 2016. State's Exhibit 16 included expenses for lab work and emergency room visit on August 5, 2016. (State's Ex. 16, p. 7) (Conf. App. p. 49). State's Exhibit 15 shows that the CVCP paid \$56 to the Floyd Valley Hospital for this visit and paid M.G.'s mother for mileage for this medical visit. (State's Ex. 15) (Conf. App. pp. 39-42). There is nothing in the record to show that this medical expense was related to the crime alleged to have been committed by the defendant.

State's Exhibit 16 showed a medical expense on August 16, 2016, at a family medical clinic. (State's Ex. 16, p. 10) (Conf. App. p. 52). The CVCP paid \$30 for this visit as well as mileage. (State's Ex. 15) (Conf. App. pp. 39-42). There is nothing in the record to show that this medical expense was related to the crime alleged to have been committed by the defendant.

State's Exhibit 16 showed a charge on September 12, 2016, for medical/surgical supplies, an emergency room visit, and radiology fees. (State's Ex. 16, p. 12) (Conf. App. p. 54). The CVCP paid the Orange City Health System \$49 for these

services. It also paid \$13.57 in mileage to M.G.'s mother. (State's Ex. 15) (Conf. App. pp. 39-42). There is nothing in the record to show that this medical expense was related to the crime alleged to have been committed by the defendant.

State's Exhibit 16 showed another emergency room visit, lab work and a CT scan three days later, on September 15, 2016. (State's Ex. 16, p. 14) (Conf. App. p. 56). The CVCP paid the Floyd Valley Hospital \$56 for these services and paid mileage to M.G.'s mother. (State's Ex. 15) (Conf. App. pp. 39-42). There is nothing in the record to show that this medical expense was related to the crime alleged to have been committed by the defendant.

State's exhibit 16 showed an ambulance charge, lab work, a CT scan, and charges for other items on January 1, 2017. (State's Ex. 16, pp. 17-18, 23) (Conf. App. pp. 59-60, 65). The CVCP paid Remsen Ambulance Service \$335 and Floyd Valley Hospital \$105 for these services. (Conf. State's Ex. 15) (App. pp. 39-42). There is nothing in the record to show that this

medical expense was related to the crime alleged to have been committed by the defendant.

Ruth Walker refused to testify as to how these charges were related to the alleged crime committed by the defendant on July 1, 2016. The only physical injury described by the victim during her testimony was that she had blood in her underwear and pain in her genitals. There is nothing in the record to indicate that multiple emergency room visits, multiple CT scans, radiology services and lab tests were connected to the July 1<sup>st</sup> incident.

In its order, the district court acknowledged that the ability to determine the causal connection was limited because of the confidentiality concerns of Iowa Code section 915.90. The court determined that, as long as the witness was able to testify that the charges were connected to the crime without stating how, that was all that was needed. (Restitution Order) (App. pp. 20-27). This denies the defendant the ability to challenge that connection as he is allowed to under Jenkins.

The order must be reversed for a lack of a causal connection between the restitution and the crime.

### **CONCLUSION**

For these reasons the Appellant requests the Court reverse the restitution order.

### **NONORAL SUBMISSION**

Counsel requests not to be heard in oral argument.

### **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.69, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,671 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



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MARIA RUHTENBERG  
Assistant Appellate Defender  
Appellate Defender Office  
Lucas Bldg., 4<sup>th</sup> Floor  
321 E. 12<sup>th</sup> Street  
Des Moines, IA 50319  
(515) 281-8841  
mruhtenberg@spd.state.ia.us  
appellatedefender@spd.state.ia.us

Dated: 8/29/19