

IN THE COURT OF APPEALS OF IOWA

No. 0-510 / 09-1749
Filed February 9, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW LEE EDWARDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Thomas R. Hronek,
District Associate Judge.

Defendant appeals a restitution order entered after his conviction for the
offense of stalking. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, David Adams, Assistant
Appellate Defender, and Bryan O'Neill and Shannon Redd, Student Legal
Interns, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Stephen Holmes, County Attorney, and Keisha Cretsinger, Assistant
County Attorney, for appellee.

Heard by Sackett, C.J., Potterfield, J., and Zimmer, S.J.* Tabor, J., takes
no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

ZIMMER, S.J.

The defendant, Andrew Lee Edwards, appeals from a district court order requiring him to pay restitution to the Crime Victim Compensation Program (CVCP) following his conviction for felony stalking. He contends the district court erred in requiring him to pay restitution because the State failed to establish a causal connection between his criminal activity and the amount to be paid. Upon our review of the record, we reverse the district court's order and remand for further proceedings.

I. Background Facts & Proceedings.

In 2007, the district court ordered Edwards to have no contact with the victim in this case, Beth Wheelock, based on Edward's history of domestic violence toward Wheelock. Despite the existence of the no-contact order, Edwards repeatedly contacted Wheelock. As a result, the State filed a trial information in charging Edwards with felony stalking in violation of Iowa Code section 708.11(3)(b)(1) (2007). Edwards entered into a plea agreement with the State and entered a plea of guilty to one count of stalking in violation of section 708.11(3)(b)(1).

In October 2008, Edwards was sentenced to a term of imprisonment not to exceed five years and ordered to pay a fine of \$750 plus surcharges and costs. Later, the State filed a motion to amend the sentence to include restitution to the CVCP in the amount of \$449.98 for counseling services on behalf of the victim. The amount of pecuniary damages was later amended to \$693.34. The district court ordered Edwards to pay \$693.34 in victim restitution.

On October 5, 2009, Edwards filed a pro se request for a restitution hearing. His written request claimed the restitution order entered by the court was improper because restitution was not part of the plea agreement in his case. The court granted Edwards's request for a hearing and appointed counsel to represent him.

At the restitution hearing, the State's two exhibits were admitted into evidence without objection by Edwards. Each exhibit is a payment summary generated by the Crime Victim Assistance Division of the CVCP. Edwards testified briefly at the hearing that Wheelock was employed and had health insurance while his case was pending. After the evidence was presented at the restitution hearing, Edwards's attorney raised the following three issues: (1) the State failed to file the statement of pecuniary damages within the thirty-day time period of section 910.3; (2) restitution was not part of the plea agreement; and (3) the State had not presented sufficient evidence the administrative rules concerning payments from the CVCP for mental health counseling had been followed.

The district court rejected the defendant's arguments. The court confirmed restitution in the amount of \$693.34. Edwards appeals the restitution order.

II. Standard of Review.

We review restitution orders for the correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004); *State v. Knudsen*, 746 N.W.2d 608, 609 (Iowa Ct. App. 2008). We determine whether the court's findings of fact are

supported by substantial evidence and whether the court properly applied the law. *State v. Paxton*, 674 N.W.2d 106, 108 (Iowa 2004).

III. Merits.

In this appeal, Edwards has presented one assignment of error for our review. He has framed the issue in the following manner: “Did the district court err in ordering the defendant to pay restitution when the State failed to establish compliance with State law?”

As noted above, at the restitution hearing Edwards challenged the compensation made on behalf of the victim, claiming the State had not presented sufficient evidence the administrative rules concerning payments from the CVCP had been followed. He argued the State failed to show (1) that the victim submitted insurance information to the program, or that her bills were first submitted to her insurer;¹ (2) a vitae establishing the mental health counselor’s educational qualifications;² and (3) a submitted treatment plan, progress certifications, and session notes to establish the legitimacy of the counseling.³ Edwards maintains that the State should have the initial burden to show compliance with the requirements of the CVCP. He contends his ability to

¹ “Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Iowa Admin. Code r. 61-9.34(4).”

² To be compensable, mental health care must be provided by a psychologist licensed under chapter 154B, a person holding at least a master’s degree in social work or counseling and guidance, or a victim counselor as defined in section 915.20A. Iowa Code § 915.86(1). “The mental health counseling provider shall submit a vitae establishing the provider’s educational qualifications for compensation.” Iowa Admin. Code r. 61-9.35(3).

³ Iowa Administrative Code rule 61-9.35(4) provides, “When compensation for mental health counseling is requested, the provider shall complete verification forms relating to counseling,” including (1) treatment plan and certification forms; (2) treatment progress and certification forms; and (3) session notes.

challenge the State's compliance with the statutory and administrative requirements for compensation is illusory unless the State is required to first make a showing that the basis for restitution is authorized by law.

When a defendant pleads guilty or is found guilty, "the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities." Iowa Code § 910.2; *Paxton*, 674 N.W.2d at 108. Restitution includes, "the payment of crime victim compensation program reimbursements." Iowa Code § 910.1(4). A victim may receive compensation for economic losses incurred as a direct result of an injury, including mental health care. Iowa Code § 915.86(1).

While this case was pending on appeal, the Iowa Supreme Court filed the case of *State v. Jenkins*, 788 N.W.2d 640 (Iowa 2010). The court overruled previous law in this area, as found in *State v. Bradley*, 637 N.W.2d 206, 215 (Iowa Ct. App. 2001), which had held that the district court was without authority to determine causation when funds were paid by the CVCP. The Iowa Supreme Court determined:

Based on our review of the statute and the applicable law, we conclude that while the district court has a mandatory duty to impose restitution under Iowa Code chapter 910, it may review CVCP 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.

Jenkins, 788 N.W.2d at 645. The court found that giving preclusive effect to a decision of the CVCP "would give rise to a substantial issue regarding improper delegation of judicial authority." *Id.* at 646. The court remanded the case to the

district court for a review of whether there was a sufficient causal link between the amount paid by the CVCP and the defendant's criminal activity. *Id.* at 647.

At oral argument in the present case, the parties agreed the case should be reversed and remanded for a new hearing before the district court in light of the supreme court's decision in *Jenkins*. We agree the case should be reversed and remanded. At the time of the district court's decision, *Bradley*, 637 N.W.2d at 215, was still good law, and the district court operated under a legal theory that it had no discretion in regard to reimbursement payments to the CVCP. We determine the district court should be given the opportunity to review the issues raised in this case in view of the law as set forth in *Jenkins*. More specifically, the case should be "remanded to the district court for a determination of whether the instant criminal offenses were the cause of injuries which were compensated by the CVCP." See *Jenkins*, 788 N.W.2d at 647.

We reverse the decision of the district court and remand for a further hearing on Edwards's arguments challenging the restitution order. We do not retain jurisdiction.

REVERSED AND REMANDED.