

IN THE COURT OF APPEALS OF IOWA

No. 8-716 / 07-1990
Filed October 15, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY ALAN MICHEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Hancock County, Paul W. Riffel,
Judge (restitution hearing).

Defendant appeals the amount of a restitution order following plea of guilty
to first-degree theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, and Karen R. Kaufman Salic, County Attorney, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

MAHAN, P.J.**I. Background Facts & Proceedings.**

Jeffrey Michel was charged with ongoing criminal conduct, theft in the first degree, fraudulent practice in the first degree (amended to third degree), and fraudulent use of a credit card. Michel later entered a plea of guilty to the theft and fraudulent practice charges. The other charges were dismissed. Michel was sentenced to a term of imprisonment and ordered to pay an undetermined amount of restitution to West Hancock Ambulance Service.

A hearing was held on the amount of restitution. While serving as treasurer of the ambulance service, Michel was responsible for making all bank deposits and paying all the bills of the service. An audit of the financial records of the ambulance service was performed after Michel's malfeasance came to light. The auditor testified at the restitution hearing that over Michel's term as treasurer, more than \$12,000 was missing from the ambulance service's bank accounts. The auditor also testified that more than \$6000 in checks were written to Michel without documentation and that there were checks for undocumented bills totaling more than \$3000. The auditor also testified that she had examined the ambulance service credit card statements and determined that charges of \$15,000 were not documented with receipts.

Michel testified that he believed he took approximately \$8000 from the ambulance service. He did not, however, keep records of the amount he stole. In support of his guilty plea, he admitted taking at least \$10,000. He also admitted using the service's credit cards to purchase personal items.

The district court found that because there were no policies or controls over the petty cash fund, defendant would not be obligated to pay restitution for \$3250. The court also credited defendant with \$2000 of restitution payments he had already made to the ambulance service, as well as \$2875 he had repaid on a personal loan extended by the service. The district court concluded defendant should pay for the legal and auditing fees the ambulance service had incurred.

The court entered an order of restitution in the amount of \$32,638.66. Michel appeals. He contends the restitution order is not supported by substantial evidence.

II. Standard of Review

Our review of a restitution order is for the correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). We are bound by the district court's findings of fact so long as they are supported by substantial evidence. *State v. Paxton*, 674 N.W.2d 106, 108 (Iowa 2004). Substantial evidence is that which a reasonable mind would accept as adequate to reach a conclusion. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001).

III. Merits.

Iowa Code section 910.2 (2007) provides that a sentencing court must order restitution to be paid by an offender to the victim of the crime. *Bonstetter*, 637 N.W.2d at 165. Restitution is the payment of pecuniary damages. Iowa Code § 910.1(4). Pecuniary damages are defined as:

[A]ll damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.

Id. § 910.1(3).

A restitution order may include any damages that are causally related to criminal activities and the order is not excessive if it bears a reasonable relationship to the damages caused by the offender's criminal act. *Bonstetter*, 637 N.W.2d at 165. This reasonable relationship must be shown by a preponderance of the evidence. *Id.* at 166.

The restitution amount ordered here is within the range of the evidence and bears a reasonable relationship to the damage caused by Michel's criminal conduct. We determine the district court used a proper method to calculate damages, and the restitution amount is supported by substantial evidence. We affirm the district court.

AFFIRMED.