

**IN THE COURT OF APPEALS OF IOWA**

No. 9-535 / 08-1493  
Filed August 19, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TERENCE DEAN HOGG,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Wapello County, Kirk A. Daily,  
District Associate Judge.

Terence Hogg appeals from the district court's restitution order.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney  
General, and Allen Cook, County Attorney.

Considered by Sackett, C.J., and Vogel and Potterfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

In the fall of 2002, Terence Hogg and Jack Ware entered into an agreement whereby Hogg would remove scrap metals from Ware's property and pay Ware twelve cents per pound of scrap removed.<sup>1</sup> Hogg removed scrap metal from Ware's property and took it to the salvage yard, but he never paid Ware. Ware claims that Hogg also took items he was not authorized to take, including six stainless steel ham press racks, a stainless steel work bench, copper, brass, and aluminum.<sup>2</sup>

The police report indicates 25,526 pounds of scrap metal were stolen, which, when valued at twelve cents per pound, had a total value of \$3063.12. Deputy Don Phillips's report states that Ware informed him Hogg owed between \$4000 and \$6000 "for the stainless steel, and for the things that were taken that Hogg did not have permission to take namely the six (6) stainless steel racks, worktable, copper, brass, and aluminum." Phillips's report also states, "Ware was not able to give this deputy a dollar amount on the other metal because he did not have a dollar amount that was taken." Ware prepared a written statement on November 8, 2002, stating, "The approximate value of all scrap removed is between [\$4000 and \$6000] depending on the replacement cost of the racks."

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<sup>1</sup> Hogg testified at his restitution hearing that Ware agreed to pay him for his labor at the rate of twelve cents per pound of scrap removed. The district court found Hogg was to pay Ware under the agreement.

<sup>2</sup> Hogg admits he was found guilty of taking roughly 25,000 pounds of scrap metal and two stainless steel racks he removed from Ware's property. Hogg argues he did not take the other items at issue.

The State charged Hogg with theft in the second degree, as a habitual offender. Hogg agreed to a trial on the minutes of testimony, and on February 27, 2008, the district court found Hogg guilty of second-degree theft in violation of Iowa Code sections 714.1 and 714.2(2) (2001). The district court suspended Hogg's sentence and ordered him to pay restitution. On March 11, 2008, the State filed a statement of pecuniary damages alleging the damages to Ware totaled \$32,732.84. At Hogg's request, a restitution hearing was held August 26, 2008.

At the hearing, Ware explained that he determined his pecuniary damages by using half of the current market value of the stolen items. Ware testified that his previous statement estimating the value at \$4000 to \$6000 included only the items that Hogg was authorized to remove and did not include those items that were taken outside of the agreement. Ware testified he had considered selling the stainless steel racks and the work bench several weeks before Hogg took those items. At that time he would have sold the ham racks for \$1000 each, and he would have sold the work bench for \$1500. In response, Hogg testified at the restitution hearing that the value of one ham rack was roughly forty dollars. Hogg estimated a reasonable restitution figure to be \$3600.

Receipts from Rosenman's salvage yard show that brass, aluminum, and stainless steel, including two loads of stainless steel racks, were sold. All checks from Rosenman's were made payable to either Hogg or his son. Hogg's son informed Phillips that Hogg hauled "a couple loads of stainless steel" elsewhere, but he did not know where.

The district court ordered Hogg to pay restitution to Ware in the amount of \$9305. In arriving at this figure, the district court chose to accept Ware's testimony that he would have taken \$1000 for each of the six ham racks and \$1500 for the work bench at the time of the theft, values much lower than Ware requested at the hearing. The court accepted Ware's statement that the value of 1220 pounds of brass scrap was \$549, the value of 960 pounds of copper scrap was \$1200, and the value of 140 pounds of aluminum scrap was \$56. Hogg appeals, arguing the district court's restitution order was unreasonable.

## **II. Standard of Review**

We review restitution orders for correction of errors at law, and we reverse only when there is a demonstrated abuse of discretion. *State v. Bradley*, 637 N.W.2d 206, 210 (Iowa Ct. App. 2001). 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).

## **III. Restitution**

In all cases in which the defendant is found guilty, the sentencing court shall order restitution. Iowa Code § 910.2. "The victim is entitled to full restitution to the extent of the damage caused by the crime." *State v. Wagner*, 484 N.W.2d 212, 216 (Iowa Ct. App. 1992). "[A] restitution order must rest on a causal connection between the established criminal act and the injuries to the victim." *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). Once this causal connection is established by a preponderance of the evidence, the victim is entitled to recovery of all damages. *Id.*

Hogg argues the State failed to prove a causal connection between the theft and the entire award. Ware's testimony and written statement asserted Hogg took six stainless steel racks, a stainless steel work bench, and copper, aluminum, and brass scrap in addition to the scrap the parties agreed Hogg could take. Receipts from Rosenman's salvage yard establish Hogg sold brass, aluminum, and stainless steel, including two loads of stainless steel racks. Statements from Hogg's son establish that Hogg hauled several loads somewhere other than Rosenman's. The minutes of testimony, which contain the stipulated evidence on which Hogg was convicted, state that Hogg took six stainless steel racks, a work bench, and copper, brass, and aluminum scrap.

The State proved a causal connection between the theft and the pecuniary damages to Ware by a preponderance of the evidence. The district court considered all of the evidence, acknowledging Ware's varying statements of value, and found Ware to be more credible than Hogg. The district court used the market value of the racks and bench at the time of the theft, as testified to by Ware, and used values for the copper, brass, and aluminum as submitted by Ware. Substantial evidence supports the district court's findings of fact, and we do not find an abuse of discretion in the district court's award of restitution.

**AFFIRMED.**