THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2018-0602

State of New Hampshire

v.

Bruce Moore

Appeal Pursuant to Rule 7 from Judgment
of the Rockingham County Superior Court

BRIEF FOR THE DEFENDANT

Thomas Barnard
Senior Assistant Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301
NH Bar # 16414
603-224-1236
(Fifteen minutes oral argument)

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TEXT OF RELEVANT AUTHORITY

RSA 651:62. Definitions

As used in this subdivision, unless the context otherwise indicates:

. . .

III. "Economic loss" means out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including:

> (a) Reasonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim or, in the case of the death of the victim, for the victim's spouse and immediate family;
>
> (b) Loss of income by the victim or the victim's dependents;
>
> (c) The value of damaged, destroyed, or lost property;
>
> (d) Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured or deceased victim would have performed, if the crime had not occurred, for the benefit of the victim or the victim's dependents;
>
> (e) Reasonable expenses related to funeral and burial or crematory services for the decedent victim.

. . .

V. “Restitution” means money or service provided by the offender to compensate a victim for economic loss, or to compensate any collateral source subrogated to the rights of the victim, which indemnifies a victim for economic loss under this subdivision.

. . .

RSA 651:63. Restitution Authorized

I. Any offender may be sentenced to make restitution in an amount determined by the court. In any case in which restitution is not ordered, the court shall state its reasons therefor on the record or in its sentencing order. Restitution may be ordered regardless of the offender’s ability to pay and regardless of the availability of other compensation; however, restitution is not intended to compensate the victim more than once for the same injury. A restitution order is not a civil judgment.

. . .

QUESTION PRESENTED

1. Whether the court erred by ordering Moore to pay for a new security system that the victim purchased following the burglary.

Issue preserved by the State's restitution request, H1* 10–11, its memorandum of law in support of that request, A7, Moore's verbal objection, H1 12–13, H2 33–35, his written objection, A10, and the court's order, AD3.

* Citations to the record are as follows:
"A" refers to the appendix to this brief containing documents other than the appealed decision;
"AD" refers to the appendix to this brief containing the appealed decision;
"H1" refers to the transcript of the plea and sentencing hearing on December 7, 2017; and
"H2" refers to the transcript of the restitution hearing on April 5, 2018.

STATEMENT OF THE CASE

In September 2016, the State obtained an indictment from a Rockingham County grand jury charging Bruce Moore with one count of burglary. A3. In December 2017, Moore pleaded guilty to the indictment and the court (Wageling, J.) sentenced him to three-and-a-half to seven years, all suspended for 10 years. A4. The parties disputed restitution, and the court asked them to submit written pleadings on the issue. H1 27. After the parties submitted their pleadings, the court, in April 2018, conducted a hearing on restitution. H2 1–38. On October 18, 2018, the court issued an order granting the State's restitution request. AD3.

STATEMENT OF THE FACTS

On February 17, 2016, between 11:00 a.m. and 1:00 p.m., Bruce Moore and an accomplice burglarized the Stratham home of R.B. and M.B., husband and wife. A3; H2 11, 13, 16. The victims were not home at the time. H2 15–16.

The victims did not have a security system, but kept their doors locked. H2 14. After unsuccessfully attempting to enter the home through the locked doors, Moore and his accomplice entered through a kitchen window. H2 14–15. They stole musical equipment and jewelry. H2 24.

The victims had two applicable insurance policies, which covered the losses beyond the combined deductible of $1,250. H1 10–11. The parties agreed that the Court should order restitution for this $1,250. H1 10–11.

Following the burglary, the victims felt unsafe and had trouble sleeping. H2 16. After obtaining quotes for security systems from several companies, R.B. entered into a three-year contract with American District Telegraph ("ADT"). H2 17, 20.

R.B. promised to pay ADT $2,123.64 over three years in monthly payments. H2 20–21. ADT promised to provide and install the security system and, for three years, provide monitoring and cover the cost of any repairs. H2 20–21.

R.B. chose ADT because, in his words, "[t]hey're the best."[1] H2 19. He explained that the system he bought "posts constant video of my driveway so I can go on my page and look at my video" and features "noise sensors," "door sensors," and "glass break sensors." H2 19.

[1] The court found that R.B. chose ADT because it "offered the best value." A4. This finding is clearly erroneous; there was no evidence that R.B. believed that ADT offered the best value.

SUMMARY OF THE ARGUMENT

A court is authorized to order a defendant to pay money to a victim only to extent that it "compensate[s]" the victim for an "economic loss" that is "incurred as a direct result of a criminal offense." For three reasons, the court erred by ordering Moore to pay for the victim's new security system. First, the security system was not "compensat[ion]" because it placed the victim in a better economic position than he would have been in had the crime not occurred. Second, a victim's decision to purchase a new security system is not the "direct result" of a prior offense. Third, even if a victim's decision to purchase a security system is the "direct result" of a prior offense when the purpose is to identify or gather evidence against the defendant or to protect against a future crime committed or otherwise caused by the defendant, the victim here purchased a new security system instead due to a generalized feeling of insecurity.

I. THE COURT ERRED BY ORDERING MOORE TO PAY FOR A NEW SECURITY SYSTEM THAT THE VICTIM PURCHASED FOLLOWING THE BURGLARY.

At the plea and sentencing hearing on December 7, 2017, the parties notified the court that they had agreed to all terms of the plea and sentence except restitution. H1 9. The State requested restitution in the amount of $3,373.64, which included $1,250 in losses not covered by insurance, plus $2,123.64 for the security system the victim installed after the burglary. H1 10–11. It argued that the security system was an "economic loss" under the restitution statute. H1 11.

Moore agreed to pay restitution of $1,250 for the unreimbursed losses but objected to an order that he pay for the victim's new security system. H1 12. A burglary, he noted, might cause the victim to spend money on all manner of preventive measures, for example, "two purebred rottweilers." H1 12. But such expenditures, he argued, differ fundamentally from the examples set forth in the statute. H1 12–13.

The parties agreed to a restitution "cap" of $3,373.64, with the final restitution amount to be determined later, H1 17–19, and the plea and sentencing proceeded, H1 19–28; A4.

On January 4, 2018, the State filed a memorandum of law in support of its restitution request. A7. The State analogized the security system to mental health counseling

for a physical or sexual assault. A8. Both, it argued, aim "to diminish the mental insecurity associated with the crime." A8.

Moore filed a written objection on January 16, 2018. A10. He argued that the "restitution statute does not permit recovery for an expenditure of this type." A10. The victim's "decision to incorporate prudent prophylactic measures to prevent future crime," he argued, "is not an economic loss suffered due to damage inflicted by . . . Moore." A11. He cited "[t]he vast range of costly and grandiose choices" that crime victims might make. A11. The State's statutory interpretation, he noted, would place courts "in the situation of making repeated value judgments" about which "measures were reasonable and sound and which were not." A11.

In a written order, the court ruled that the record was "insufficient to decide whether the victims' installation of a security system . . . occurred as a 'direct result' of [Moore's] criminal conduct." A17. Thus, it ordered an evidentiary hearing. A17. It further indicated that, if it found that the security system was the "direct result" of the crime, it would then consider whether the statute authorized restitution for that type of purchase. A17–A18.

Following R.B.'s testimony at the April 5 evidentiary hearing, Moore reiterated his argument that the security system "[wa]s not a remedial decision to fix an economic loss

incurred as a result of this offense." H2 34. He distinguished the security system from expenditures listed in the statute, such as medical and dental care and mental health services. H2 33–35. Unlike those "remedial" expenditures, he argued, the purpose of the security system was "to prevent future harm." H2 33–35.

In a written order issued on October 18, 2018, the court granted the State's restitution request. AD3. The court first found that there was a "causal connection" between the burglary and R.B's decision to purchase the security system, and thus, that the purchase was a "direct result" of the burglary. AD6–AD8.

The court then addressed whether the cost of the security system fell within the definition of "restitution" — and the subsidiary definition of "economic loss" — set forth in RSA 651:62. AD8–AD12. After conducting a statutory analysis, including consideration of the doctrine of ejusdem generis, the court concluded that the statute authorized restitution for the purchase of the security system. AD8–AD12. In so ruling, the court erred.

Issues of statutory construction are reviewed de novo. TS & A Motors v. Kia Motors Am., Inc., ___ N.H. ___ (Mar. 29, 2019). "In matters of statutory interpretation, [this Court is] the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole." Appeal of

Town of Belmont (New Hampshire Bd. of Tax & Land Appeals), ___ N.H. ___ (Mar. 19, 2019). "[It] first look[s] to the language of the statute itself, and, if possible, construe[s] that language according to its plain and ordinary meaning." Id. "[It] interpret[s] legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "[It] construe[s] all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. "Moreover, [it] do[es] not consider words and phrases in isolation, but rather within the context of the statute as a whole." Id.

RSA 651:63 authorizes a sentencing court to order an offender to pay "restitution." RSA 651:62, V defines "[r]estitution," in relevant part, as "money . . . provided by the offender to compensate a victim for economic loss." RSA 651:62, III(a) defines "[e]conomic loss," in relevant part, as "out-of-pocket losses or other expenses incurred as a direct result of a criminal offense, including," among other things, "[r]easonable charges incurred for reasonably needed products, services and accommodations, including but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services for the victim. . ."

For three reasons, the definition of "restitution" does not cover the cost of the security system at issue here. First, the payment was not "compensat[ion]" because it would place the victim in a better financial position than he would be in had the burglary not occurred. Second, a victim's decision to implement security measures is not "a direct result of a criminal offense." Third, even if new security measures are, in some circumstances, "a direct result of a criminal offense," none of those circumstances are present here.

A. A new security system is not "compensation."

"[C]ertain expenses are not ever the appropriate bases for restitution, as a matter of law." People v. Fitzgerald, 728 N.E.2d 1271, 1275 (Ill. App. Ct. 2000) (reversing, as plain error, restitution order for security system). "[T]he cost of security measures added by a victim following the commission of an offense" is one of them. People v. T.W., 644 N.E.2d 438, 439 (Ill. App. Ct. 1994). "Although . . . the victims may have suffered emotional distress as a result of [the defendant's] crime, and . . . they may have installed the security system as an attempt to alleviate this angst, . . . our restitution statute [does not] authorize[] a trial court to order a defendant to pay for such an expense." Rich v. State, 890 N.E.2d 44, 50 (Ind. Ct. App. 2008).

In only one jurisdiction has the legislature expressly authorized restitution to cover the cost of a security system. Cal. Penal Code § 1202.4(f)(3)(J). Like every other jurisdiction, New Hampshire's restitution statute does not expressly authorize restitution for the cost of a home security system.

RSA 651:62, V defines "[r]estitution" as "compensat[ion]." This Court has defined "compensat[ion]," as that word is used in the restitution statutes, narrowly. In State v. Burr, 147 N.H. 102 (2001), the defendant was convicted of animal cruelty based on her inhumane treatment of twenty dogs. Id. at 103. The sentencing court ordered her to pay restitution to the humane society that rescued the dogs. Id. The defendant objected to the restitution order, because, "as a result of the widespread public and media attention to the case, [the humane society's] donations increased significantly," and in fact "exceeded the amount of [the humane society's] claimed losses." Id. The defendant noted that RSA 651:63 provides that "restitution is not intended to compensate the victim more than once for the same injury" and argued that the donations constituted "compensation," so that ordering her to pay restitution would result in "double recovery." Id. This Court rejected that argument. Id. at 104. "[V]oluntary public donations" this Court held, "are not 'compensation,'" even if the defendant's crime was the but-for cause of those donations. Id.

This Court has held that restitution in criminal cases "generally should be more limited in scope than civil damages." State v. Fleming, 125 N.H. 238, 241 (1984) (quoting People v. Heil, 262 N.W.2d 895, 900 (Mich. Ct. App. 1977)). In New Hampshire, civil damages are limited to compensatory damages. See 8 R. McNamara, New Hampshire Practice, Personal Injury — Tort and Insurance Practice § 11.04 (2018) ("Damages for tort in New Hampshire are considered to be recompense for injury sustained, and are remedial rather than punitive"). "[T]he underlying purpose" of "compensatory damages" "is to make the [victim] whole again, . . . [to] restor[e] the person wronged as nearly as possible to the position he would have been in if the wrong had not been committed." Alonzi v. Northeast Generation Servs. Co., 156 N.H. 656, 666 (2008) (quotation and citation omitted).

Had the victim here sued Moore for trespass or conversion, he could not recover the cost of his new home security system. The security system did not "restore" the victim "to the position he would have been in if the [burglary] had not been committed," because the victim had no security system before the burglary.

Not all security measures place victims in a better financial position than they were in before the crime. Rekeying locks, for instance, does not provide the victim with a new asset or increase the victim's net worth. See Fleisher v.

Commonwealth, 822 S.E.2d 679, 683 (Va. Ct. App. 2019) (restitution for the cost of rekeying locks "d[oes] not go beyond making the victim whole."). But ordering a defendant to pay for the victim's new security system would give the victim a windfall, because the security system increases the equity in the home. Thus, the victim's net worth will be higher than it would be if no burglary had been committed. Because restitution in criminal cases is more limited than damages in civil cases, and because the victim could not obtain reimbursement for the security system in a civil case, the court erred by ordering such reimbursement in a criminal case. See Alcaraz v. State, 44 P.3d 68, 732 (Wyo. 2002) (reversing a restitution order for the full cost of surveillance equipment because the victim could not have recovered the full cost in a civil action).

The doctrine of ejusdem generis also suggests that the restitution statute does not authorize an order for payments that place the victim in a better financial position than the victim would be in had the offense not occurred. RSA 651:62, III provides that the "losses or other expenses" subject to restitution "includ[e]" five categories, such as "[l]oss of income," "[t]he value of damaged, destroyed, or lost property," the cost of services the victim otherwise would have performed, and funeral expenses. One category covers the cost of "products, services and accommodations, including

but not limited to charges for medical and dental care, rehabilitation, and other remedial treatment and care including mental health services. . .” RSA 651:62, III(a).

The court here ruled that “the phrase ‘including but not limited to’ as it is used in section III(a) means exactly what it says — restitution in this matter is not limited to the types of items specifically enumerated.” AD11–AD12 (emphasis omitted). This was legal error.

Under the principle of ejusdem generis, “when specific words in a statute follow general ones, the general words are construed to embrace only objects similar in nature to those enumerated by the specific words.” State v. Proctor, ___ N.H. ___ (Feb. 8, 2019) (construing the phrase “including but not limited to”). Thus, although the phrases “including” and “including but not limited to” do not connote that the list that follows is “exhaustive,” they do “limit[] the items intended to be covered to those of the same type as the items specifically listed.” In re Search Warrant for 1832 Candia Rd., 171 N.H. 53, 59 (2018) (quotation and ellipsis omitted).

A security system is not “of the same type” as the examples listed in RSA 651:62, III. All of those examples are intended to place the victim, as nearly as possible, in the same financial position that the victim would be in had the offense not occurred. None would place the victim in a better

financial position than the victim would be in had the offense not occurred.

The court here found that, "under the facts of this case, the short-term installation of a security system to mitigate the mental trauma caused by a burglary is comparable to a victim's receipt of mental health counseling." AD8. But unlike reimbursement for a new security system, reimbursement for mental health counseling merely places the victim in the same financial position that the victim would be in had the crime not occurred. Appellate courts in Indiana and Illinois have rejected the analogy between mental health treatment and the purchase of a new security system. Rich, 890 N.E.2d at 53, n.5 ("Although we in no way trivialize the anxiety felt by the victims in this case, we do not find the State's analogy persuasive. . . Clearly, the installation of a security system does not fall under [the restitution statute]."); T.W., 644 N.E.2d at 439 ("Therapy for victims of sex offenses is a permitted restitution item; security devices for burglary victims are not.").

The analogy fails for a second reason. The purpose of a security system is to minimize the risk that the crime will occur again. The purpose of medical care, dental care, rehabilitation or mental health services is not to minimize the risk that the crime will occur again, but to treat or mitigate the adverse effects from the first time the crime occurred.

Mental health counseling, and any prescriptions that are issued in the context of mental health counseling, are provided by qualified professionals. Those professionals are highly trained, follow a code of ethics, and are subject to oversight by a professional governing body. See RSA Chapter 329-B (regulating psychologists); RSA Chapter 330-A (regulating other mental health practitioners). Here, there is no evidence that the victims sought mental health treatment for their anxiety. R.B. specifically testified that he did not seek any mental health treatment. H2 27.

The court's analogy might have had merit if a mental health professional had evaluated the victims and recommended that they purchase a security system to treat what the court described as their "mental trauma." See, e.g., State v. Higley, 253 P.3d 750, 751–54 (Idaho Ct. App. 2010) (affirming an order of restitution to a convenience-store clerk for lost wages, where the clerk quit his job following the defendant's armed robbery, because the clerk's counselor determined that his symptoms were "consistent with post traumatic stress disorder" and recommended that he quit his job "to ameliorate his post traumatic stress."); State v. Pumphrey, 338 P.3d 819, 824 (Or. Ct. App. 2014) (affirming restitution order for the cost of obtaining police reports about the defendant's unrelated conduct where the

victim's counselor recommended that she obtain the reports). Here, however, no mental health professional evaluated the victims or recommended that they purchase a security system.

Appellate courts in other jurisdictions have refused to construe similar statutes to authorize restitution that would place the victims in a better financial position than they would be in if no crime had been committed.

In People v. Reyes, 166 P.3d 301 (Colo. App. 2007), the court vacated an order requiring the defendant to reimburse the victim, a non-profit organization, for new, interior door locks following the burglary. Id. at 304. The court reasoned that the restitution order "puts the victim in a better financial position than it would have been in had defendant's conduct not occurred" by "giv[ing] the victim an additional asset it did not have prior to defendant's conduct." Id. at 304.

In Rich, the defendant pleaded guilty to burglary and the sentencing court ordered him to reimburse the victims for the cost of a home security system. Rich, 890 N.E.2d at 46. The appellate court reversed, noting that, "as the victims owned no security system, their installation of a security system is not a 'repair' to their home, but an upgrade or improvement. Indeed, the victims' home is now . . . in a better condition than before [the defendant's] break-in." Id. at 52. If such restitution orders were permissible, the court noted,

"another burglary victim could [claim restitution for] dogs; another [for] firearms; and another [for the cost of] mov[ing] to a different neighborhood." Id.

In TPJ v. State, 66 P.3d 710 (Wyo. 2003), the court ordered the juvenile, who had been found delinquent based on numerous burglaries, to reimburse one of the victims for the cost of a car alarm. Id. at 711. The appellate court reversed, finding that the restitution order gave the victim "a windfall." Id. at 716; see also Alcaraz, 44 P.3d at 72 ("Overcompensation is undesirable not only because it is unjust but also because it provides the wrong incentives to both parties.").

New Hampshire's restitution statute is not intended to place victims in a better financial position that they would be in had the crime not been committed. See RSA 651:63, I ("[R]estitution is not intended to compensate the victim more than once for the same injury."). It does not authorize courts to order reimbursement for expenses beyond those necessary to "compensate" the victim. New security equipment, by definition, is not "compensation." For these reasons, this Court should join appellate courts in Illinois and Indiana and hold that, at least absent a professional recommendation, New Hampshire's restitution statute does not authorize a court to order a defendant to pay for a security system that the victim did not have at the time of the offense.

B. New security measures are not the "direct result" of a prior crime.

RSA 651:62, V limits restitution to "economic loss," and paragraph III limits "economic loss" to that "incurred as a direct result of a criminal offense." A past crime may cause a victim to fear future crimes. That fear may, in turn, prompt a victim to implement new security measures. But new security measures purchased by a victim to guard against future crimes are not a "direct result" of the prior criminal offense.

Florida, Idaho, Kansas and Vermont have restitution statutes with causation requirements that are similar to, or more permissive than, New Hampshire's. Appellate courts in those states hold that new security measures to guard against future crimes are too attenuated to satisfy the causation requirements of their restitution statutes.

Florida's juvenile restitution statute is more permissive than the New Hampshire statute at issue here; it does not require that the loss be a "direct result" of the crime. A.J.S. v. State, 235 So. 3d 1007, 1008 (Fla. Dist. Ct. App. 2017) ("any damage or loss caused by the child's offense"). However, in A.J.S., the court reversed a restitution order for an identity-theft-protection service purchased because the juvenile burglarized a church and took church employees' personal information. Id. at 1008–09. The court reversed the order despite acknowledging that "the theft of the personal

information in the present case could, if the information were given to persons who used it improperly, place the victim at a greater risk of harm." Id. at 1009. In J.M. v. State, 661 So. 2d 1285 (Fla. Dist. Ct. App. 1995), the court reversed a restitution order for the victim's costs in rekeying his house, even though the victim lost a single key ring containing both house and car keys and the juvenile later used the car keys to steal the victim's car. Id. at 1285–86. "Although prudence may have suggested that [the victim] obtain new locks for his home," the court explained, "there was no significant causal relation between [the victim's] 'loss' in having to pay for new house locks and the offenses which appellant committed." Id. at 1286.

Idaho's restitution statute, like New Hampshire's, limits restitution to "direct" losses or expenses. State v. Gonzales, 171 P.3d 266, 269 (Idaho Ct. App. 2007). In Gonzalez, the court reversed an order of restitution for the victim's forfeited tuition and supplies where the victim dropped out of a massage therapy program after the crime "because she feared another similar incident would occur." Id. at 267–70. The court did not address whether the feared "similar incident" was independent of the defendant's conduct. Id. In State v. Waidelich, 97 P.3d 489 (Idaho Ct. App. 2004), the defendant attempted to burglarize a dog breeder's home to steal a puppy. Id. at 490. The court reversed the restitution order for

puppy boarding even though the victim feared "that [the defendant] or his accomplices would return to steal the puppies." Id. at 490–91. "While [the court] d[id] not doubt that a victim of an attempted burglary feels a distinct sense of violation, and worries about the possibility of further violation," the boarding costs, it held, were "excluded from the definition of 'economic loss.'" Id. at 490. The court added that, "[i]f such [an order] were allowed, a victim of car theft could claim restitution for building a garage to protect his vehicle, a victim of battery could [claim restitution for] a firearm, and the burglary victim could [claim restitution for] a home security system. We perceive few boundaries on the responses which victims could have to criminal acts or on the restitution awards that could result." Id. at 491.

Although Kansas's restitution statute does not expressly require "direct" causation, its courts limit restitution to the "direct result[s]" of the crime and exclude "indirect or consequential result[s]." State v. Hunziker, 56 P.3d 202, 211 (Kan. 2002). In State v. Chambers, 138 P.3d 405 (Kan. Ct. App. 2006), the court reversed a restitution order for a security system, even though there was "[n]o doubt the purchase of the security system was prompted by concern that [the defendant], a neighbor of the victim [of the defendant's sexually motivated burglary], would reoffend." Id. at 415. The security system, the court explained, "was an

example of tangential costs incurred as a result of a crime, not a cost caused by the crime." Id. (quotation omitted).

Although Vermont's restitution does not expressly require "direct" causation, its courts require a "direct link between the crime and the restitution." State v. Forant, 719 A.2d 399, 403 (Vt. 1998). In Forant, the court vacated a restitution order for the cost to the victim, the defendant's wife, of changing her locks and telephone number. Id. at 402–04. Those expenses, the court explained, "were indirect costs, resulting from [the victim's] fear of her husband's access to the house and concern that he would harass her using the telephone," not "the direct result of defendant's crime of domestic assault." Id. at 403; see also State v. Baker, 177 A.3d 1093, 1099 (Vt. 2017) (reaffirming Forant).

This Court should join the courts in Florida, Idaho, Kansas and Vermont and hold that new security measures purchased by a victim to guard against future crimes are not a "direct result" of the prior criminal offense.

C. Even if new security measures are, in some circumstances, the "direct result" of a prior crime, those circumstances are not present here.

In some cases, victims implement new security measures after a crime because they fear a future crime committed by the same defendant or his accomplice.

Appellate courts in Colorado, Montana, Ohio, Oregon, Virginia, Wisconsin and Wyoming hold that, in these circumstances, security measures implemented to guard against such a future crime are sufficiently connected to the defendant's conduct to satisfy the causation requirement of their restitution statutes.

In People v. Bryant, 122 P.3d 1026 (Colo. App. 2005), the court affirmed a restitution order for a victim's moving expenses, lease-termination charges, and lost wages. Id. at 1027–28. The Court emphasized that the expenses were not based on a "generalized feeling of insecurity," but rather on "a specific threat," posed by the defendant and his accomplice, that was "still outstanding" when the expenses were incurred. Id. at 1028.

One common security measure is rekeying locks. Courts have permitted restitution for the cost of rekeying locks, because victims rekey locks in response to the increased risk of future crime specifically caused the defendant. State v. Thompson, 91 P.3d 12, 14–15 (Mont. 2004) (affirming restitution order for rekeying locks where the defendant, a maintenance man at a commercial building, stole from tenants); In re M.N., 96 N.E.3d 980, 981–83 (Ohio Ct. App. 2017) (affirming restitution order to rekey locks on the victim's car and home where the juvenile used the victim's car key to steal her car, which had spare home keys

in the glove compartment); Pumphrey, 338 P.3d at 822–23 (affirming restitution order for the victim's cost of changing phone number, locks, lost wages from changing locks, and renting a temporary residence, where the victim believed that the defendant, who repeatedly violated a stalking protective order, had acquired her personal information); Fleisher, 822 S.E.2d at 681–83 (affirming restitution order for rekeying locks on two vehicles because the defendant took keys to one vehicle and stole it, and the stolen vehicle contained the victim's purse, which contained keys to the other vehicle); Dreiman v. State, 825 P.2d 758, 764 (Wyo. 1992) (affirming restitution for rekeying locks where the defendant stole and copied the victim's keys).

Courts have also affirmed restitution for security equipment installed to identify or gather evidence against a specific, repeat perpetrator. Thus, in State v. Good, 100 P.3d 644 (Mont. 2004), the court affirmed a restitution order for surveillance equipment, installed at the "forceful suggestions" of law-enforcement officers, to gather evidence against the defendant, the victim's neighbor, who was engaged in an extended campaign of harassing the victim and his family. Id. at 646–48. In State v. Queever, 887 N.W.2d 912 (Wis. Ct. App. 2016), the court affirmed a restitution order for a home security system that the eighty-six-year-old victim installed specifically to identify the defendant, who had

repeatedly entered her home at night and stolen money from her purse. Id. at 914–19.

Courts have also affirmed restitution orders for security equipment installed to protect against a specific defendant who continued to pose a threat to the victim. In State v. Christy, 383 P.3d 406 (Or. Ct. App. 2016), the court affirmed a restitution order for a home security system installed by the victim, "a 73-year-old woman against whom [the defendant] had a history of violent conduct," specifically "to safeguard her from defendant." Id. at 407–08. In State v. Johnson, 649 N.W.2d 284 (Wis. Ct. App. 2002), the court affirmed a restitution order for a security system where the defendant "was still coming around the neighborhood after the incident, even though he no longer lived [there]," the child victim testified that she was afraid that the defendant, specifically, "might harm her at some point in the future," and "[the defendant] had threatened that he would 'get even' with [the victim] if she ever told anyone about the incident." Id. at 290–91. In State v. Behnke, 553 N.W.2d 265 (Wis. Ct. App. 1996), the court affirmed an order of restitution for a dead-bolt lock that the victim purchased "because [the defendant] knew where she lived." Id. at 272–73.

However, courts in four of these jurisdictions — Colorado, Ohio, Virginia and Wyoming — have held that, if the victim was instead motivated by the ambient risk of crime

— as opposed to the risk of crime specifically connected to the defendant — then the causation requirement is not satisfied, even if the defendant's conduct caused the victim to appreciate the general risk.

In People v. Martinez, 378 P.3d 761 (Colo. App. 2015), the court vacated a restitution order for the installation of bars on the victim's window because they were not installed "to avoid or mitigate a specific and ongoing threat related to the defendant's unlawful conduct," but rather "result[ed] from a general feeling of insecurity." Id. at 768–70. Expenses resulting from general insecurity, the court held, are "too attenuated to" satisfy the statute's causation requirement. Id. at 768. In Reyes, the court vacated a restitution order for installing new interior locks because the defendant's crime "apparently was a random act by an intoxicated person," the locks were not "needed to protect the victim from defendant in the future," and the "defendant's conduct did not create or increase the victim's risk of future burglaries, it merely exposed an existing vulnerability." Reyes, 166 P.3d at 302–04. In People v. Trujillo, 75 P.3d 1133 (Colo. App. 2003), the court reversed a restitution order for a security system because, although a "diminished feeling of security . . . may be common to most victims of crime," "a victim's effort to find peace of mind and a sense of personal security is attenuated from the offender's conduct." Id. at 1140.

In In re Z.N., 29 N.E.3d 1016 (Ohio Ct. App. 2015), the court reversed a restitution order for a security system because, although the victim "was extremely afraid, was up throughout the night and no longer felt safe in her home," the security system was merely a "consequential cost," and not "a proximate result," of the juvenile's offense. Id. at 1018–24. In Howell v. Commonwealth, 652 S.E.2d 107 (Va. 2007), the court reversed a restitution order for a security system because, although the victims "were afraid" and one was "not comfortable being alone at the business" after the defendant burglarized it, "[t]he attenuation is too great" to satisfy the statute's causation requirement. Id. at 107–09. In TPJ, the court reversed a restitution order for a car alarm because, although the juvenile's offense "made [the victim] insecure and afraid that her car would be broken into again," there was not "a direct causal connection" between the juvenile's offense and the purchase of the car alarm. TPJ, 66 P.3d at 714–16.

In Alcaraz, the court explained the distinction between: (a) reimbursement for security measures to protect against the defendant's future crimes, and (b) reimbursement for measures intended to protect against others' future crimes. The defendant, who was employed by a grocery store to clean the floor at night, stole money. Alcaraz, 44 P.3d at 70. When the store owner became suspicious, he installed surveillance

cameras. Id. Those cameras captured footage of the defendant committing the thefts, which led to his arrest and guilty plea. Id. The sentencing court ordered restitution for the total cost of the surveillance cameras. Id.

The appellate court reversed. Id. at 73. It noted that, although "[t]he store owner testified that, had [the defendant] not been stealing, the store would not have purchased the surveillance equipment," he also "admitted the surveillance equipment would be used after the individual stealing money was apprehended and its continued benefit was another reason why he purchased the equipment." Id. at 72. Thus, the court held, the surveillance system's "total purchase price must be reduced in consideration of the value the system will provide to the store owner over its useful life." Id. at 73. The court remanded, instructing the sentencing court to "allocate to [the defendant] a reasonable proportion of the cost of the purchase and operation of the surveillance equipment used to apprehend him, considering all factors including the equipment's expected useful life and depreciation." Id.

Outside of California, where restitution for new security systems is expressly authorized by statute, undersigned counsel is unable to locate any published opinion from any appellate court affirming restitution for a new security system motivated merely by the victim's fear of crime generally, as opposed to crime connected specifically to the defendant.

Here, there was no evidence that R.B. purchased the security system because he or his wife feared a future crime connected specifically to Moore or his accomplice. Rather, the evidence showed that R.B. was motivated by a generalized feeling of insecurity. Thus, even under the most permissive of the statutory interpretations employed in other jurisdictions, the statute did not authorize the court to order Moore to pay for the victim's new security system.

This Court will not interpret a statute to reach an unjust result. State v. Brawley, 171 N.H. 333, 337 (2018). Authorizing restitution in this circumstance is unjust. No one disputes that a defendant should be held responsible for the economic losses that his crime directly causes. Thus, if a defendant causes the victim to believe that the defendant will commit another crime against the victim in the future, there is arguably some logic to holding that defendant liable for the reasonable security measures taken by the victim to protect against the risk that that defendant will commit that future crime.

But, presumably, everyone would also agree that a defendant should not be held responsible for economic losses caused by some other, unrelated crime, merely because the defendant happens to have committed the same type of offense. Thus, there is no logic to holding a defendant responsible for security measures taken by the victim to

protect against the risk that another individual will commit an unrelated future crime. Doing so holds a defendant responsible for the fact that, regardless of his future conduct, other people will inevitably commit crimes. Cf. United States v. Monaghan, 741 F.2d 1434, 1441 (D.C. Cir. 1984) ("The amelioration of society's woes is far too heavy a burden for the individual criminal defendant to bear.").

D. Even if the statute is ambiguous, legislative history supports Moore's position.

If the statutory language is ambiguous, this Court "will resolve the ambiguity by determining the legislature's intent in light of legislative history." Hogan v. Pat's Peak Skiing, LLC, 168 N.H. 71, 73 (2015). The definitions of "restitution" and "economic loss" set forth in RSA 651:62 were enacted in 1996 by Senate Bill 633. Nothing in the bill's legislative history suggests that the legislature intended authorize ordering payments that place victims in a better financial position than they would be in had the crime not occurred. See House Comm. on Finance, Hr'g on SB 633-FN-A (Apr. 22, 1996) (reprinted at A19) at 2 (A20) (Bill's sponsor testified that "they got the idea for this bill" from a constituent who sustained damage to his teeth in an assault but, because no restitution was ordered, still "ha[d] not had his teeth fixed" two years later). Nothing suggests that it intended to authorize ordering defendants to pay for new security assets

purchased after the crime. And nothing suggests that it intended to authorize ordering defendants to pay for new security measures to protect against future unrelated crimes.

Had the legislature intended to authorize courts to order defendants to pay for these types of expenditures, one would expect to see some mention of that intent in the legislative history. Its absence shows that the legislature did not intend to authorize such orders.

E. Even if legislative history does not resolve the ambiguity, the rule of lenity applies.

"[T]he rule of lenity serves as a guide for interpreting criminal statutes where the legislature failed to articulate its intent unambiguously." State v. Dansereau, 157 N.H. 596, 602 (2008). It "generally holds that ambiguity in a criminal statute should be resolved against an interpretation which would increase the penalties or punishments imposed on a defendant." Id. By applying the rule, this Court "reject[s] the impulse to speculate regarding a dubious legislative intent and avoid[s] playing the part of a mind reader." Id. (quotation and brackets omitted). The rule applies where "neither the language nor the legislative history . . . clearly establish what the legislature intended." Id. at 603.

If the legislature intends to authorize courts to order defendants to make payments for the type of expenditure at issue here, it is certainly free to do so. But given the absence

of any indication of such an intent in the plain language or legislative history, this Court should hold that the statute did not authorize the restitution order.

CONCLUSION

WHEREFORE, Bruce Moore respectfully requests that this Court reverse.

Undersigned counsel requests fifteen minutes oral argument.

The appealed decision is in writing and is being submitted in a separate appendix that contains no other documents.

This brief complies with the applicable word limitation and contains 6,408 words.

Respectfully submitted,

/s/ Thomas Barnard
Thomas Barnard, #16414
Senior Assistant Appellate Defender
Appellate Defender Program
10 Ferry Street, Suite 202
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief is being timely provided to the Criminal Bureau of the New Hampshire Attorney General's Office through the electronic filing system's electronic service.

/s/ Thomas Barnard
Thomas Barnard

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