

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2020-0053

State of New Hampshire

v.

Matthew Gedney

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
GRAFTON COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

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(Oral Argument Waived)

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QUESTION PRESENTED

A trial court may sentence “any offender” to pay restitution so long as the State proves by a preponderance of the evidence that a victim incurred an economic loss as a “direct result” of a criminal offense. Here, the victims incurred counseling expenses after two armed robbers entered their home and robbed them at gunpoint. A jury found the defendant guilty of conspiracy to commit that armed robbery but deadlocked on the armed robbery charge. At sentencing, the court ordered the defendant to pay restitution after reviewing the trial evidence and finding the defendant entered the victims’ home and threatened them with a gun. Did the trial court commit reversible error in ordering restitution?

TEXT OF RELEVANT AUTHORITIES

RSA 629:3 Conspiracy

- I. A person is guilty of conspiracy if, with a purpose that a crime defined by statute be committed, he agrees with one or more persons to commit or cause the commission of such crime, and an overt act is committed by one of the conspirators in furtherance of the conspiracy.
-
- IV. The penalty for conspiracy is the same as that authorized for the crime that was the object of the conspiracy, except that in the case of a conspiracy to commit murder the punishment shall be imprisonment for a term of not more than 30 years.

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

RSA 651:62 Relevant Definitions

- 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 . . .
- IV. "Offender" means any person convicted of a criminal or delinquent act.
- V. "Restitution" means money or service provided by the offender to compensate a victim for economic loss

STATEMENT OF THE CASE

Following a two-day jury trial in Grafton County Superior Court, a jury convicted the defendant, Matthey Gedney, of conspiracy to commit armed robbery but deadlocked on an armed robbery charge. T 280. *See* RSA 629:3 (2016); RSA 636:1, III (2016); T 279.¹ The court (*MacLeod, J.*) sentenced the defendant to serve a stand-committed sentence of 6 ½ to 15 years and ordered the defendant to pay \$10,000 in restitution. ST 26-27; AD 22-23.

This appeal followed.

¹ Citations to the record are as follows:

“AD__” refers to the addendum attached to the defendant’s brief and page number;

“T__” refers to the transcript trial held September 26-27, 2019 and page number;

“ST__” refers to the transcript of the sentencing hearing held January 6, 2020 and page number;

“DB__” refers to the defendant’s appellate brief and page number.

STATEMENT OF FACTS

A. Testimony from the Victims and Responding Officers

At a little after 6:00 AM on April 4, 2019, a man and a woman, later identified as the defendant and Jessica Evans, broke into Christine and Randy Rhudes's home in Alexandria, New Hampshire. T 27. The defendant and Evans were dressed in black and wore ski masks. T 28, 57. Evans held a striped baseball bat. T 28, 58. The defendant had a black and silver handgun. T 28, 54, 57. "Open the fucking safe or I'm going to blow your fucking heads off," he said. T 28, 54.

The defendant nudged Christine and Randy towards the closet in the master bathroom where the Rhudes kept their safe. T 29, 55. Randy had recently broken four ribs and his right hand; he struggled to open the safe with his non-dominant left hand. T 29, 53. "Don't try anything funny or I'll blow your effing head off," said the masked man. T 55.

Christine sat on the bed near the woman with the bat. T 30-31, 55. Christine covered her head with a pillow because she "thought they were going to shoot [them] in the head." T 30. Christine begged: "[P]lease, we have grandchildren and kids. Please don't kill us." T 30. The response: "[I]f you do everything right, we won't kill you." T 30. Christine told the defendant and Evans that her 70-year-old great uncle was downstairs, to which the defendant replied: "[D]on't worry about him; my boys will blow him the fuck away if he does anything." T 32. Christine thought "there were all these people outside that were going to kill us out in the driveway." T 32.

After Randy opened the safe, the defendant took cash, credit cards, and other items and loaded them into a backpack. T 31, 56-57. Evans took a pack of cigarettes from Christine's bureau warning: "these things will kill you." T 50. Christine later realized several rings were missing. T 50.

The defendant and Evans walked out of the bedroom and, after they left the house, Christine called 911. T 31-32. On the recording of that 911 call played at trial, Christine breathlessly told the operator that she and Randy had been robbed at gunpoint and that the robbers had threatened to kill them. T 32-33.

Forty-eight minutes later, State Trooper Ball arrived at the victims' home. T 33-34, 59. Ball testified the victims were "very upset." T 114. The victims informed Ball that they had been robbed by a male and female armed with a gun and baseball bat. T 88. Each described the man as being about five-foot-seven. T 107. Randy informed Ball that the robbers had taken approximately \$140,000, "60 years of savings." T 59. Ball left the victims' home after 15-30 minutes and noticed a handgun magazine in their driveway. T 88.

Ball then learned that police may have located the suspects in an abandoned barn approximately a quarter of a mile from the victims' home. T 90. When Ball arrived on site, Casper—a police dog certified in tracking people by scent—signaled that there might be people inside the barn. T 92-93, 122-23. Police announced their presence and informed whoever was in the barn to "come out now, or you're going to get bit." T 130. Casper entered the barn and police heard a woman scream. T 131-32. Eventually, a woman—Jessica Evans—came out of the barn. T 92-93, 132-33.

Police spoke with Evans and learned that her boyfriend, the defendant, remained inside the barn. T 118-19, 158. Police entered the barn with Casper and found “a large wad of cash.” T 141. Casper drew the officers’ attention upward 20 or 30 feet to the barn’s rafters. T 141-44. Police saw a shirt sleeve, demanded the defendant reveal himself, and the defendant—who was “extremely agitated, hostile”—sat up in the rafters. T 144-45. The defendant eventually came down and police took him into custody. T 146, 164.

The police reentered the barn and found a backpack containing a large quantity of cash. T 152-54. Officers took the backpack to a bank to count the money using a machine. T 159. The officers had recovered \$171,873.25. T 161.

Police transported Evans and the defendant to the Plymouth police department and placed them in adjoining cells. T 165. Police overheard the following conversation through an air vent in the cinder block wall that separated the cells. T 165.

Jessica: Tell him that KK and Smitty were with us.

Matthew: KK and who? Did they drive?

Jessica: Make it Travis, not Kat Kat.

Matthew: Don’t say I was with you; you don’t remember.

T 168. The day after the robbery, Ball interviewed Evans. She promised that she was going to be honest, denied knowing anything about the home invasion, and pinned it on “KK and Smitty.” T 110-11.

B. Testimony From the Victims' Neighbors and Police Officers about a Blue Lexus that Crashed Shortly After the Robbery

Several of the victims' neighbors testified at trial. Mark Bedard testified that on the morning of April 4, at approximately 6:13, he heard a loud crash, looked out the window, saw a car in the woods and two people running. T 64. Mark called 911 to report the accident. T 65.

Mark's girlfriend, Andrea Bujead, testified that, after she was awoken by the crash, she went outside and found a bright blue Lexus stuck in an ice bank. T 68, 70-71. She took pictures "because who runs from a car accident." T 68. She thought she saw leaves blowing in the wind but then realized the "leaves" were hundred-dollar bills. T 68-69.

Two other neighbors, Charles Kuizinas and Alison Joyce, testified that they had seen the same blue Lexus, and either two men or a man and a woman, parked nearby a day or two before the robbery. T 77-78, 81.

Police towed the abandoned Lexus to a secured garage at the Plymouth Police Department. T 94. Police got a warrant, searched the car, and recovered a gun from the front driver's seat floorboard area. T 89, 99-100. The gun matched the magazine Ball had recovered from the victims' driveway. T 89-90. Police also found a baseball bat, several one-hundred dollar bills, credit cards with the name "Christine Rhude," and a bill of sale. T 96-97. According to the signed bill of sale, the defendant purchased the blue Lexus on March 19, 2019. T 98.

C. Jessica Evans's Testimony

At trial, Jessica Evans testified that in April 2019, she lived in Pembroke with the defendant and Tracey Rhude. T 180. Tracey had previously been married to Randy Rhude's brother and "had some animosity" towards Christine Rhude. T 209-10. According to Evans, a week or two before the robbery, Tracey informed Evans and the defendant that the victims had a large amount of cash in their home. T 181. Evans, the defendant, and a "sidekick"—Ben—planned to rob the victims' home. T 182. Evans testified that she and the defendant traveled to Alexandria in the blue Lexus shortly before the April 4 robbery to "stakeout" the victims' home. T 182-83.

Evans testified that on the morning of April 4, she went with the defendant to Alexandria in the blue Lexus. T 184. Ben was not present because he had not answered his phone that morning and so the defendant did not pick him up as previously planned. T 184. Evans and the defendant wore masks to hide their identity and gloves to "prevent fingerprints." T 185. Evans had a bat and Matthew had a gun. T 186. Evans and the defendant entered the victims' home. T 188. The defendant pulled Randy into a master bathroom and ordered him to open the safe. T 188. Evans stayed with Christine in the adjacent bedroom. T 188. Christine was "very distraught" and Evans was concerned Christine would have a heart attack. T 189. After five to ten minutes, the defendant came out of the bathroom with the backpack containing so much money that it could not zip closed. T 190.

Evans testified that she and the defendant left the victims' home with the backpack, got into the Lexus, and the defendant drove off at a speed approaching 80 miles an hour. T 191. The car started to fishtail, hit a snowbank, and got stuck. T 192. The two retreated to a nearby barn with the backpack. T 192. After they put some cash in a fanny pack for emergencies, and "tried to stash a little bit here and there throughout the barn just in case [they] had to come back for it," a dog came into the barn and latched onto Evan's leg. T 196, 200. Evans surrendered herself to the police. T 200.

Evans acknowledged that she was not truthful when the police first interviewed her. T 201-02, 212-13. She also testified that she entered a naked plea the month before the trial, meaning the State had not proposed a sentence in exchange for her testimony. T 203, 222-25.

D. Jury Instructions and Closing Argument

The trial court instructed the jury on both the conspiracy to commit armed robbery and armed robbery charges. The court instructed the jury that in order to find the defendant guilty of conspiracy to commit armed robbery, the State must prove beyond a reasonable doubt that: "one, the [d]efendant agreed with another person to commit or cause the commission of armed robbery; two, the [d]efendant entered into the agreement; three, . . . during the existence of the conspiracy, one of its members committed an overt act alleged in the indictment; and four, this overt act was committed in furtherance of the conspiracy." T 247. The court also identified the five overt acts alleged in the indictment, specifically:

- (1) [The defendant] and Jessica Evans drove to the Rhudes's home in Alexandria;
- (2) [The defendant] and Jessica Evans covered their faces with masks;
- (3) [The defendant] had a handgun and Evans had a baseball bat when they entered the Rhudes's residence;
- (4) [The defendant] and Evans forced Randy Rhude to open a safe and took more than 100,000 dollars;
- (5) [The defendant] and/or Evans put the cash in a backpack and then left the Rhudes's residence.

T 247. The court also informed the jury that the State and defendant stipulated that the defendant is five-foot-ten. ST 236-37.

During closing arguments, defense counsel conceded the defendant was in the Blue Lexus with Evans on the morning of the robbery but asserted the defendant got out of the car near the abandoned barn prior to the robbery. T 256. Counsel argued that although the defendant was a “jerk” in his subsequent interactions with police, the defendant did not realize what was going on until “[Evans] ran in[to] the barn with that bag full of cash” at which point “he was in over his head” and “didn’t know what to do.” T 260.

The jury found the defendant guilty of conspiracy to commit armed robbery. T 280. As a result of the jury’s deadlock on the armed robbery charge, the court declared a mistrial on that charge. T 279.

E. The Sentencing Hearing

The court held a sentencing hearing in January 2020. Christine testified that she and Randy “begged” the defendant for their lives while the defendant threatened to “blow [their] fucking heads off.” ST 6. She testified

that she would “never forget” the defendant’s eyes. ST 6. She said the defendant’s actions stripped away her “normal life,” leaving her unable to sleep in her own bedroom and scared to leave her home. ST 6-8. She further testified that in order to deal with her fear, she now sat “with a gun next to me at all times at home, in my own home” and had started counseling. ST 8. Randy did not testify at the sentencing hearing. The State asked the court to sentence the defendant to 7½ to 15 years in prison and to order the defendant to pay up to \$10,000 in restitution to cover the cost of the victims’ counseling. ST 3.

Defense counsel argued that there is an “insufficient nexus for restitution to be ordered” because it was not clear from the jury’s verdict that the jury found the defendant committed the acts that directly caused the victims’ need for counseling. ST 13, 20.

The court rejected defense counsel’s argument because the restitution statute allows “[a]ny offender” to be sentenced to make restitution, *see* RSA 651:63 (Supp. 2019), and the penalty for conspiracy is the same as the penalty for the crime the conspirators agreed to commit. ST 25-26; *see* RSA 629:3. Although the court acknowledged that it was not clear from the verdict which overt act or acts the jury found the defendant committed, the court credited Evan’s testimony that the defendant was “the one with a gun” and “the one that pointed the gun at [Randy] Rhude, at his head.” ST 24. The court noted that Christine Rhude observed these acts, and that even though Christine could not identify the defendant as the robber at trial, Evan’s testimony established that the defendant was the person who entered the victims’ home and threatened them at gunpoint. ST 24.

The court also found that “the impact of this crime on Mrs. Rhude, in particular, in terms of restitution, is evident.” ST 26. The court sentenced the defendant to a stand-committed sentence of 6½ to 15 years and ordered him to make restitution up to \$10,000 toward the costs of the victims’ counseling. ST 26-27; AD 22-23.

SUMMARY OF THE ARGUMENT

The trial court sustainably exercised its discretion when it ordered the defendant to pay up to \$10,000 in restitution to cover the cost of the victims' counseling expenses.

Through RSA 629:3, the New Hampshire Legislature has set the penalty for conspiracy to match the penalty for the crime that was the object of the conspiracy. RSA 629:3, IV. The Legislature has also decided that a trial court may include in a criminal sentence money to compensate a victim for out-of-pocket losses including mental health services if those losses are incurred as a "direct result of a criminal offense." RSA 651:62, III(a), IV, V (2016); RSA 651:63. If the factual basis for restitution is disputed, "the State must prove by a preponderance of the evidence that the loss or damage is causally connected to the offense and bears a significant relationship to the offense." *State v. Folley*, 172 N.H. 760, 771 (2020).

A jury convicted the defendant of conspiracy to commit armed robbery. At sentencing, the trial court credited trial testimony that the defendant had a gun, entered the victims' home, and pointed the gun at Randy's head. ST 24. The court also found that the defendant's crime had an "ongoing" and "huge detrimental impact" upon his victims. ST 21, 24. This Court should affirm the trial court's restitution order because the evidence supports the trial court's conclusion that the defendant's actions caused his victims' economic losses.

ARGUMENT

THE TRIAL COURT SUSTAINABLY EXERCISED ITS DISCRETION IN SENTENCING THE DEFENDANT TO PAY RESTITUTION

When a defendant “causes a victim to suffer a loss, the restitution statute creates an obligation to make the victim whole.” *State v. Moore*, ___ N.H. ___ (slip op. at 3) (decided June 10, 2020) (quotation omitted). “Any offender may be sentenced to make restitution in an amount determined by the court.” RSA 651:63, I. The Legislature defined “Restitution,” in pertinent part, as “money or service provided by the offender to compensate a victim for economic loss.” RSA 651:62, V. In turn, “economic loss” means “out-of-pocket losses or other expenses incurred as a direct result of a criminal offense,” including: “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” RSA 651:62, III(a).

The phrase “direct result” is not defined in the statute or elsewhere in the Criminal Code. This Court has, however, repeatedly emphasized that the “plain language of the [restitution] statute ‘clearly and unambiguously requires a causal connection between the criminal act and the economic loss or damage.’” *Folley*, 172 N.H. at 772 (quoting *State v. Pinault*, 168 N.H. 28, 32 (2015)). This Court has declined to adopt a test to “ascertain at what point an event is no longer a direct result of a crime.” *State v. Armstrong*, 151 N.H. 686, 687 (2005); *see also Pinault*, 168 N.H. at 32 (declining to adopt a test to determine “the outer limits of the connection that must exist”

between the economic loss and the criminal conduct); *Folley*, 172 N.H. at 772 (same).

If a defendant disputes the factual basis for restitution, the State bears the burden to prove “by a preponderance of the evidence that the victim's loss or damage is causally connected to the offense and bears a significant relationship to the offense.” *Id.* at 771. This Court reviews a trial court’s factual findings with deference; it reviews the court’s legal conclusions *de novo*. *Id.*

On appeal, the defendant agrees that “the court could find by a preponderance of the evidence that a robbery occurred,” DB 17, and that “counseling for a victim of a home invasion and theft may properly be reimbursed through an order of restitution upon conviction for *any crime* that caused the need for counseling.” DB 16 (emphasis added). But the defendant urges this Court to reverse the restitution order on the basis that the State presented no evidence that the defendant’s own acts in furtherance of the conspiracy, as opposed to the acts of his co-conspirators, caused the victims’ need for counseling. DB 17. This argument fails because it overlooks the evidence the trial court credited in ordering restitution.

At sentencing, the trial court found that the “evidence at trial from Ms. Evans was that [the defendant was] the one with a gun and . . . the one that pointed the gun at Mr. Rhude, at his head.” ST 24. The court also concluded the defendant’s acts had an “ongoing” and “huge detrimental impact” on the victims. ST 21. Those factual findings, to which this Court defers, easily and amply demonstrate that the defendant—by his own actions—caused his victims’ need for counseling. Accordingly, the trial court did not commit reversible error in ordering the defendant to pay

restitution because the State proved by more than a preponderance of the evidence that the victims' economic loss was causally connected to the defendant's offense. *See Folley*, 172 N.H. at 771.

To argue to the contrary, the defendant disregards the trial court's factual findings and the evidence that supports them. Instead, he argues that this Court must reverse the trial court's restitution order because, absent a special verdict form, it is not clear whether the jury found beyond a reasonable doubt that the defendant engaged in the overt acts that most directly caused the victims' harm. DB 17. The defendant's argument misapprehends the fact that the statute gives the judge, not the jury, the authority to sentence an offender to make restitution. *See* RSA 651:63. His argument also misapprehends the applicable standard of proof when a defendant disputes the factual basis for restitution. At trial, the State must prove guilt beyond a reasonable doubt; at sentencing, the State bears its burden if it proves "by a preponderance of the evidence that the loss or damage is causally connected to the offense." *Folley*, 172 N.H. at 771.

The defendant also disregards the plain language of New Hampshire's conspiracy statute, which states: "The penalty for conspiracy is the same as that authorized for the crime that was the object of the conspiracy." RSA 629:3, IV. Pursuant to this statute, if a defendant agrees with another person to commit a crime, and at least one of the conspirators performs an overt act in furtherance of the conspiracy, the court can impose the same penalty that it would upon a defendant convicted of the crime he was conspiring to commit. *State v. Kilgus*, 128 N.H. 577, 586 (1986). The overt act "need not be criminal in character," and "may be entirely innocent when considered alone." *Id.* Notably, the statute does not require the

defendant, as opposed to his co-conspirator, to commit the overt act in order for the defendant to be guilty of conspiracy and sentenced accordingly.

The defendant's construction of a trial court's ability to order restitution, a construction that completely overlooks the fact that the Legislature has set the penalty for conspiracy to match the penalty for the crime that was the object of the conspiracy, *see* RSA 629:3, IV, would result in an absurdity. *See Petition of Carrier*, 165 N.H. 719, 721 (2013) (this Court construes all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result). For example, in a hypothetical case in which the victim died after a conspirator agreed with others to commit murder, secured a gun, and gave it to the murderer, the bullet and the person who pulled the trigger directly killed the victim, not the conspirator. The defendant's construction would allow a court to sentence the conspirator to the same term of imprisonment as a murderer, a deprivation of liberty, but would not allow the court to sentence the conspirator to pay restitution to cover the victim's funeral expenses, a deprivation of money. *See* RSA 651:62, III(e) (defining "economic loss" to include reasonable funeral or burial expenses for a decedent victim). Such a result defies common sense, the conspiracy statute, and this Court's explicit instruction in *State v. Eno* that if, on remand, the trial court found "the defendant acted in concert" with another, the court could order the defendant to pay restitution "for all of the loss attributable to the charged conduct." *State v. Eno*, 143 N.H. 465, 471 (1999).

But even if the defendant's construction has any merit, here, defendant's own actions—entering the victims' home and threatening them

at gunpoint—caused the victims’ need for counseling. The trial court found that the defendant committed these acts, ST 24, and far more than a preponderance of the evidence supports the court’s factual findings. *See Folley*, 172 N.H. at 771. This Court accepts a trial court’s factual findings “unless they lack support in the record or are clearly erroneous.” *Id.* Consequently, even under the defendant’s construction of New Hampshire’s restitution sentencing scheme, the trial court’s restitution order would stand. Therefore, this Court may affirm without resolving the interplay of the New Hampshire restitution and conspiracy statutes.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State waives oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Elizabeth Velez, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 4,048 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

December 1, 2020

/s/Elizabeth Velez
Elizabeth Velez

CERTIFICATE OF SERVICE

I, Elizabeth Velez, hereby certify that a copy of the State's brief shall be served on Stephanie Hausman, Deputy Chief Appellate Defender, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

December 1, 2020

/s/Elizabeth Velez
Elizabeth Velez