

STATE OF MINNESOTA  
COUNTY OF ANOKA

FILED  
Court Administrator

DISTRICT COURT  
TENTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

D [REDACTED] E [REDACTED] B [REDACTED],

Defendant.

APR 01 2014

Anoka County, MN  
Deputy

ORDER AND MEMORANDUM

Court File No.: 02-CR-[REDACTED]

On February 19, 2014, the Court stayed imposition of sentence upon Defendant D [REDACTED] E [REDACTED] B [REDACTED] on several conditions, including that he make restitution in the amount of \$2,714.89. That amount represents damages to a truck owned by J.D.E. Defendant denied that he had caused the damages to the truck, and demanded a contested restitution hearing, which was scheduled for March 19, 2014. Defendant waived his appearance at the hearing.

At the March 19 hearing, Defendant's attorney argued that Defendant had neither pled guilty to, nor been convicted of, any conduct causing damage to J.D.E.'s truck. The record reflects that this is correct. Defendant has not admitted to causing damage to the truck or assisting others in causing damage to the truck. The prosecution has introduced no evidence that Defendant caused damage to the truck. (The parties stipulated that the Court could review security camera footage; the footage is grainy, and it is not possible to determine from it which individual caused the damage to the truck.)

The prosecution has the initial burden of establishing, by a preponderance of the evidence, that J.D.E.'s truck was damaged as a result of Defendant's criminal conduct. Minn. Stat. § 611A.045, subd. 3(a). This burden has not been met.

Accordingly, the Court makes the following



## MEMORANDUM

Minnesota's victim's rights statute provides that "[a] victim of a crime has the right to receive restitution ... [from] the offender if the offender is convicted ... ." Minn. Stat.

§ 611A.04, subd. 1. However, a victim may recover restitution only from the person who committed the crime that directly caused the victim's losses. *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. Ct. App. 1999).

In this case, Defendant was convicted of a crime that caused a loss to J.A.J.H. (the loss of J.A.J.H.'s cell phone). Defendant was not convicted of causing the damage to J.D.E.'s truck. Put another way, while J.D.E. is a victim of a crime, he is not a victim of a crime for which Defendant has been convicted. For that reason, J.D.E. cannot recover restitution from Defendant.

In that respect, this case is distinguishable from cases in which Minnesota's appellate courts have held it is appropriate to hold co-defendants jointly and severally liable for all damages caused to the victim. *See, e.g., State v. Miller*, 842 N.W.2d 474 (Minn. Ct. App. 2014). Unlike those cases, Defendant was convicted of an offense that is separate from the offense that caused the damage to J.D.E.'s truck.

The State correctly notes that defendants who challenge restitution awards are required to submit affidavits setting forth the bases for challenge. *See* Minn. Stat. § 611A.045, subd. 3. Defendant has not filed such an affidavit. However, the requirement that an affidavit be filed presupposes that the defendant has been convicted of the offenses that caused the harm to the victim. The statutory requirement that challenges to restitution awards must be set out in an affidavit does not supersede the requirement that the offender's conduct was the direct cause of the victim's losses.

Because Defendant was not convicted of conduct that caused damage to J.D.E.'s truck, requiring him to pay restitution for the damage is unlawful. That portion of Defendant's sentence must therefore be vacated.

N.J.L.<sup>R</sup>