

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ITASCA

NINTH JUDICIAL DISTRICT

Court File No. 31-CR-17-3007

State of Minnesota,

Plaintiff,

vs.

Steven Lee Mishow,

Defendant.

RESTITUTION ORDER

The above-entitled matter came on for Sentencing and Restitution Hearing before the Honorable Korey Wahwassuck, Judge of District Court, on April 30, 2018. The State was represented by Matti R. Adam, Assistant Itasca County Attorney. The Defendant appeared in person and was represented by Deven L. Nice, Attorney at Law.

Based on all of the files, records, and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. On or about September 19, 2017, two cats (Olivia and Emerald) belonging to P.D. went missing during a storm. P.D. believed the cats were killed by her neighbor, Steven Mishow (the Defendant), based on statements he made to other neighbors threatening to kill any cats that entered his property.
2. Investigator Mark Weller, Itasca County Sheriff's Department, interviewed Defendant in regards to the missing cats on October 11, 2017. Defendant admitted that he shot at cats but claimed that he did not kill them. He described the cats he shot at, and the descriptions matched the appearance of P.D.'s cats.

3. Based on the acts described above, Defendant was charged with one felony count of Mistreat/Torture Animals Resulting in Death, pursuant to Minn. Stat. § 343.21 subd. 1, and two misdemeanor counts of Cruelty to Animals, pursuant to Minn. Stat. § 343.21 subd. 7. On March 26, 2018, Defendant pled guilty to the two misdemeanor counts of Cruelty to Animals.
4. P.D. seeks restitution for the loss of her cats. She filed an affidavit on November, 20, 2017 seeking restitution in the amount of \$10,339.52. The affidavit states that P.D. incurred \$7,994.52 in care costs for Olivia between 2007 and 2017, and she incurred \$2,405 in care costs for Emerald between 2011 and 2017. She testified that she calculated this loss amount based on veterinarian bills, general pet care costs, and an estimate of the annual cost of having a cat (as determined based on an online pet care costs calculator). She further testified that the cost of obtaining a new cat, including spaying/neutering, declawing, and other veterinarian bills, is approximately \$500-\$600.
5. Defendant filed an affidavit on April 13, 2018 objecting to the claimed restitution amount. He argues that restitution should be limited to the fair market value of the cats. He also states in his affidavit that he has limited financial resources and lacks the ability to pay restitution. At the hearing, he proposed that restitution be awarded to P.D. in the amount of \$100.

CONCLUSIONS OF LAW

1. The State has proven by a preponderance of the evidence that P.D. is entitled to restitution for the fair market replacement value of two cats.

2. P.D. is not entitled to restitution for the entire amount claimed in her restitution affidavit, as restitution must be limited to losses incurred as a direct result of the crime for which the Defendant has been convicted.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER

1. Defendant shall pay restitution to P.D. in the amount of \$1,000.
2. Restitution payments shall be made to Itasca County Court Administration.
3. Any payments made by Defendant shall be allocated to payment of restitution before they are allocated to payment of fines or court fees.
4. Pursuant to Minn. Stat. § 611A.04 subd. 3, the Itasca County Court Administrator shall docket the restitution award as a civil judgment in favor of P.D. Any filing fees for docketing of the order as a civil judgment shall be waived as to P.D.
5. Payment of restitution shall be a condition of Defendant's probation. The obligation to pay restitution shall continue throughout his term of probation.
6. Effective July 1, 2018, Defendant shall pay a minimum of \$100 per month towards the restitution obligation. Payments shall be due on the first business day of each month.
7. Let the attached Memorandum be incorporated into the Order.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated this 19th day of June, 2018



Judge of District Court

Wahwassuck, Corey
Jun 19 2018 11:28 AM

JUDGMENT

I certify the above Order constitutes the Judgment of the Court and Judgment is hereby entered.

Dated: _____

SEAN R. JONES
COURT ADMINISTRATOR

By: _____
Senior Court Clerk

MEMORANDUM

I. Purpose of Restitution and Burden of Proof

Minn. Stat. § 609.125 subd. 1(a)(4) gives the district court authority to order payment of restitution as part of a misdemeanor or gross misdemeanor sentence. Under Minn. Stat. § 611A.045 subd. 3(a), the burden of demonstrating the amount of loss sustained by the victim and the appropriateness of a particular type of restitution is on the prosecution.

The court, in determining whether to order restitution and the amount of the restitution, shall consider the amount of economic loss suffered by the victim as a result of the offense, and the income, resources, and obligations of the defendant. Minn. Stat. § 611A.045 subd. 1.

The primary purpose of the restitution statute is to restore crime victims to the same financial position they were in before the crime. *State v. Nelson*, 796 N.W.2d 343, 346 (Minn. App. 2011), citing *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). While the district court has broad discretion in granting restitution, the record must provide a factual basis for the amount awarded by showing the nature and amount of the losses with reasonable specificity. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000), quoting *State v. Keehn*, 554 N.W.2d 405, 407 (Minn. App. 1996). The district court may order restitution only for losses the defendant directly caused by the conduct that led to the conviction. *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014).

II. Restitution for Loss of a Pet

Under Minnesota law, pets are items of personal property, and the loss of a pet is measured by its fair market value. *See e.g. Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 633 (Minn. 2012). Thus, while animal owners have considerable sentimental attachment to their

pets, Minnesota law treats an animal like any other item of tangible personal property. *Id.*, citing *Corn v. Sheppard*, 229 N.W. 869, 870 (Minn. 1930).

P.D. established through her credible testimony that the fair market replacement value of a cat, including necessary veterinary expenses, is approximately \$500. The Court finds that P.D. has a proper basis of knowledge to reliably estimate the fair market value of a cat based upon her years of experience as a cat owner. Because Defendant deprived P.D. of two cats as a result of his criminal act, the Court finds \$1,000 to be the restitution amount that will fairly compensate P.D. for her loss.

The Court denies the balance of P.D.'s \$10,339.52 restitution claim because the losses claimed in P.D.'s restitution affidavit were not incurred as a direct result of the crime for which Defendant has been convicted. P.D.'s restitution affidavit lists the pet care expenses she incurred from the time she acquired the cats up until the date of Defendant's crime. P.D. did not incur these expenses as a direct result of Defendant's crime—she incurred them before the crime occurred, and she would have incurred them even if Defendant had not committed the crime. Under the *Miller* standard, the pet care expenses cited in the restitution affidavit are not a proper basis for a restitution award.

III. Defendant's Ability to Pay

Pursuant to Minn. Stat. § 611A.045 subd. 1(2), the Court must consider the Defendant's income, resources, and obligations when determining the restitution amount.

Defendant's financial circumstances are set forth in the Pre-Sentence Investigation (PSI). Defendant has never been employed, and he has collected Social Security Disability Income (SSDI) since he was 18 years old. He currently receives \$750 per month in SSDI benefits, plus

\$80 per month from Itasca County Health and Human Services and \$39 per month in food support. The PSI states that Defendant's monthly expenses are \$620-\$640. Based on his present financial circumstances, the Court finds that Defendant has the ability to pay \$100 per month towards his restitution obligation. If Defendant pays at least \$100 per month as ordered herein, he will satisfy his restitution obligation during his one-year term of probation.

K.W.