

2016

State of Utah, Plaintiff/Appellee vs. Dalton Thomas, Defendant/ Appellant

Utah Court of Appeals

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Case No. 201500624-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

DALTON THOMAS,
Defendant/Appellant.

Brief of Appellee

Appeal from a restitution order following convictions for burglary and criminal mischief, third degree felonies, in the Fourth Judicial District, Utah County, the Honorable James R. Taylor presiding

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Oral argument NOT requested

FILED
UTAH APPELLATE COURTS

FEB 25 2016

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Case No. 201500624-CA

IN THE
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STATE OF UTAH,
Plaintiff/Appellee,

v.

DALTON THOMAS,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from a restitution order following convictions for burglary and criminal mischief, third degree felonies. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2012).

STATEMENT OF THE ISSUES

Defendant Dalton Thomas kicked open the door of a newly-constructed home and took a hatchet to the walls, cabinets, and other items inside, causing extensive damage. Through plea negotiations, Thomas pled guilty to reduced charges and was placed on probation. The parties stipulated to a complete restitution amount of \$10,629. Thomas requested a hearing to present evidence of his ability to pay for purposes of court-ordered restitution.

At the hearing, Thomas and his father testified about his income—estimated at about \$1000 per month—and expenses—totaling approximately \$182, but likely to increase. The trial court ordered that Thomas pay the full \$10,629 in monthly installments of \$125, because it did not “see a rational reason not to attempt to make the victim whole,” and the amount approximated the “cost of a used car,” which was “something that someone of” Thomas’s “age might reasonably buy.” Further, though Thomas’s expenses would likely increase, the court explained that his earning potential would as well. But the court ruled that Thomas could comply with the restitution order even if his earnings did not increase.

1. Did the trial court abuse its discretion by ordering Thomas to pay the full restitution amount?

Standard of Review. Review is for abuse of discretion. *State v. Laycock*, 2009 UT 53, ¶28, 214 P.3d 104.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions, statutes, and rules are reproduced in Addendum A:

Utah Code Ann. § 77-38a-302 (restitution statute).¹

¹ Unless otherwise indicated, citations are to the current code, which has not substantively changed.

STATEMENT OF THE CASE

A. Summary of facts.²

Thomas kicked in the door of a newly-constructed home in Orem and took a hatchet to the cabinets, walls, interior doors, and other items inside, causing extensive damage. R2-3.

B. Summary of proceedings.

The State charged Thomas with burglary of a dwelling and criminal mischief, both second degree felonies. R1-2. Through plea negotiations, Thomas pled guilty to burglary and criminal mischief as third degree felonies. R19-30, 67.

The victim requested restitution in the amount of \$10,629. R32, 34. Thomas stipulated that this amount reflected complete restitution, but requested a hearing on court-ordered restitution, so that the court could factor in evidence of his ability to pay. R71-76.

Before the hearing, Thomas submitted a financial declaration in which he stated that he would be earning approximately \$1000 per month, and have monthly expenses of about \$160—\$80 for transportation, \$50 for a cell phone, and \$30 for monthly supervision fees, though the supervision amount was likely to increase. R46-52.

² Because Thomas pled guilty before preliminary hearing, the State takes the facts from the Information and probable cause statement.

At the hearing, both Thomas and his father testified. On his income, Thomas explained that he had a new job at Little Caesar's and would be earning about \$1000 per month. R47, R87-88. His expenses included \$30 per month in supervision fees to Adult Probation and Parole, though he expected that amount to increase because he was employed; \$50 per month for a cell phone; and \$22 per month for medication. R52, 88-89, 91. He also testified that he was receiving substance abuse and mental health treatment, but that his mother's insurance covered that. R88-89. He had few living expenses because he was living with his father rent-free, and would only be expected to contribute to his food expenses when he had income. R89, 92. Thomas's father testified that Thomas would be expected to contribute to both his food, gas, and utilities after taking into account "his fines and his medication," and that the father drove Thomas around "to help him out and get him to where he needs to get to." R94.

The trial court noted the full restitution amount and Thomas's age of 22, and ruled that there was no "reason he can't pay this off if I give him enough time. I think he should. It seems to me that having this paid off and behind him by the time he turns 30 is a reasonable time to have that done." R95. Dividing up the payments over that period of time came out to \$125 per month. *Id.* The court noted that this amount was "doable" given

Thomas's current salary and his "limited expenses," and noted that Thomas was going to get his GED, he would likely be able to get a better job. R95-96.

Defense counsel agreed that some restitution was appropriate, but objected to the full amount because Thomas was "receiving mental health treatment"; he was making only \$1000 per month, and "we don't know that he's going to be able to get better employment"; that the full amount was "astronomical" and "impose[d] a great burden" on him. R97-98.

The trial court found that the amount was not "astronomical," and that though the defendant "struggles and has disabilities," the court was "satisfied that he's capable of earning at least" \$1000 per month "going forward." R98. The court noted that it had looked to the factors that defense counsel noted, and was "satisfied" that the order was "reasonable and appropriate." *Id.* The court further noted that Thomas could "get a better job or find another way to pay" the restitution sooner than the 8 years allotted, and that the restitution amount was "the cost of a used car" which was "something that someone of" Thomas's "age might reasonably buy." R99.

Thomas timely appealed. R57.

SUMMARY OF ARGUMENT

Thomas has not shown that the trial court abused its discretion in imposing \$10,629 restitution. The trial court took all of the evidence into account and properly ruled that Thomas was able to make the victim whole if given enough time, making \$125 payments over the course of eight years.

ARGUMENT

I.

The trial court properly exercised its broad discretion to order full restitution.

Thomas's sole argument on appeal is that the trial court abused its discretion by ordering him to pay \$10,629 in restitution because the record shows that paying \$125 per month toward restitution on a \$1000 per month gross salary shows that the court did not take proper account of his "financial resources" and the "burden" of repayment on him, as the restitution statute requires. Appt.Br. 9-12. The record defeats this claim, and shows that the trial court properly considered the relevant statutory factors. It merely came to a different conclusion than Thomas would have liked.

"When a defendant is convicted of criminal activity that has resulted in pecuniary damages," the court is required to "order that the defendant make restitution to" his victim(s). Utah Code Ann. § 77-38a-302(1). There is

no dispute that Thomas's conduct "resulted in pecuniary damages" to the homebuilder.

The trial court was required to determine both "complete restitution" and "court-ordered restitution." *Id.* § 77-38a-302(2). Thomas stipulated here that complete restitution—that is, the amount "necessary to compensate [the] victim for all losses caused by" him, *id.* at -302(2)(A)—was \$10,629. R71-76. And he did not dispute the propriety of some court-ordered restitution—that is, an amount he would "pay as part of the criminal sentence." Utah Code Ann. § 77-38a-302(2)(b)—he only disputed the amount. R97-98.

When determining court-ordered restitution, trial courts take into account the loss to the victim, "the financial resources of the defendant," "the burden that payment of restitution will impose, with regard to the other obligations of the defendant," "the ability of the defendant to pay restitution on an installment basis," "the rehabilitative effect on the defendant," and "other circumstances that the court determines may make restitution inappropriate." Utah Code Ann. § 77-38a-302(5)(c).

Trial courts have wide discretion in determining this amount. *Laycock*, 2009 UT 53. Such an order is overturned only for an abuse of discretion—that is, if "no reasonable person would take the view adopted

by the trial court.” *State v. Corbitt*, 2003 UT App 417, ¶6, 82 P.3d 211 (citation, quotation, and alteration omitted).

The trial court properly exercised its discretion here. The court had before it the cost to the victim, Thomas’s financial resources, the burden that restitution would impose, and Thomas’s ability to pay in installments. A reasonable person in the trial court’s position could determine that Thomas was able to pay at least \$125 per month while making at least \$1000 per month, given Thomas’s monthly expenses of less than \$200. *Cf. State v. Wallace*, 2006 UT 86, ¶¶3, 12-15, 150 P.3d 540 (upholding imposition of 12-year probation term to pay \$626,000 restitution, even though trial court recognized “the unlikelihood of Wallace ever being able to pay off the entire amount”).

Thomas offers a number of arguments to show an abuse of discretion, none of them availing. He first asserts that the trial court “did not consider [his] ‘financial resources’ in any reasonable way.” Aplt.Br. 10. But as shown, the record refutes this: the trial court took full account of Thomas’s present earnings, and ruled that he could pay in installments even projecting his current level of income over the probationary term. R95-99.

Thomas also asserts that the court did “not reasonably consider the burden that a \$125 per month payment would be upon” him “in light of his

other financial obligations,” and did not “properly consider how difficult it would be to pay” this amount “for eight years for someone with” his “limited resources.” Aplt.Br. 11. But the trial court was fully aware of Thomas’s income and expenses—it simply disagreed that the burden was as great as defense counsel asserted. R98.

Finally, Thomas argues that the trial court should have found that Thomas’s “mental health conditions” and “employment limitations” precluded the amount of court-ordered restitution. Aplt.Br. 11. But Thomas’s out-of-pocket expenses for mental health treatment were only \$22 per month for medication, as his mother’s insurance apparently covered the rest. R52, 88-89. And the trial court ruled that Thomas was capable of improving his employment prospects by obtaining his GED. R95-96. Thomas presented no evidence below that his bipolar disorder prevents him from doing this.

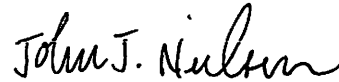
In sum, Thomas has not shown that the trial court abused its discretion by ordering him to pay restitution of \$10,629 in \$125 monthly installments.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on February 24, 2016.

SEAN D. REYES
Utah Attorney General

A handwritten signature in cursive script, reading "John J. Nielsen", positioned above a horizontal line.

JOHN J. NIELSEN
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

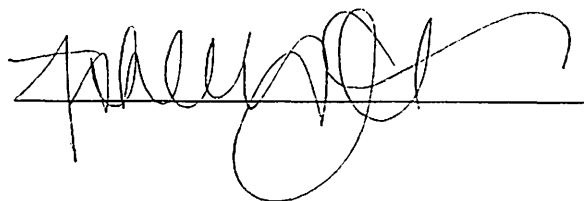
I certify that on February 24, 2016, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Douglas J. Thompson
Utah County Public Defender Assoc.
Appeals Division
51 South University Ave., Ste. 206
Provo, UT 84601

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

A handwritten signature in black ink, appearing to read 'Douglas J. Thompson', is written over a horizontal line.

Addenda

Addendum A

West's Utah Code Annotated
Title 77. Utah Code of Criminal Procedure
Chapter 38A. Crime Victims Restitution Act (Refs & Annos)
Part 3. Restitution Requirements

U.C.A. 1953 § 77-38a-302

§ 77-38a-302. Restitution criteria

Currentness

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5)(a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

- (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;
 - (ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
 - (iii) the cost of necessary physical and occupational therapy and rehabilitation;
 - (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;
 - (v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and
 - (vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.
- (c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:
- (i) the factors listed in Subsections (5)(a) and (b);
 - (ii) the financial resources of the defendant, as disclosed in the financial declaration described in Section 77-38a-204;
 - (iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;
 - (iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
 - (v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and
 - (vi) other circumstances that the court determines may make restitution inappropriate.
- (d)(i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.
- (ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Credits

Laws 2001, c. 137, § 8, eff. April 30, 2001; Laws 2002, c. 35, § 13, eff. May 6, 2002; Laws 2002, c. 185, § 51, eff. May 6, 2002; Laws 2003, c. 285, § 1, eff. May 5, 2003; Laws 2005, c. 96, § 5, eff. May 2, 2005; Laws 2013, c. 74, § 10, eff. May 14, 2013.

U.C.A. 1953 § 77-38a-302, UT ST § 77-38a-302

Current through 2015 First Special Session

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Addendum B

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

DALTON BOYD THOMAS,

Defendant.

)
)
)
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) Case No. 151400780 FS
)
)
)
)
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Restitution Hearing
Electronically Recorded on
July 30, 2015

BEFORE: THE HONORABLE JAMES R. TAYLOR
Fourth District Court Judge

APPEARANCES

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1 COURT CLERK: You do solemnly swear the testimony you
2 shall give in the case now pending before the Court will be the
3 truth, the whole truth and nothing but the truth, so help you
4 God?

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 BRIAN MILLER,
8 having been first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. YOUNG:

12 Q. Thank you, Mr. Miller, for being here. I'm going to
13 ask you to state your name and tell me where you're employed.

14 A. Brian Miller with Mill Haven Construction, Mill Haven
15 Homes.

16 Q. In what capacity do you work for Mill Haven Homes?

17 A. I'm a construction manager.

18 Q. Okay, and what do you -- what does that mean? Exactly
19 what do you do in that capacity?

20 A. I'm a superintendent that I oversee all the projects
21 in a given area of custom homes being built.

22 Q. Okay, and back in March of 2015 were there some -- was
23 there a home that was damaged that was owned by Mill Haven?

24 A. There was, yes.

25 Q. Tell me where that was located and how you got involved

1 in this case.

2 A. I showed up at -- the home was actually located north
3 Orem, 1300 North and about 2nd West. I showed up to open the
4 house up for the subcontractors to come into work and opened up
5 the garage door and walked in and noticed that the door had
6 been kicked in.

7 Q. Okay, did you observe any other damage?

8 A. Then I-- then I went into the house and walked through
9 the rest of the house and noticed the damages throughout the
10 house.

11 Q. Okay, and tell me a little bit about this home. How
12 did -- who owned it; where was it going?

13 A. At the time it was under contract by a homeowner. They
14 were -- the loan was being carried by Mill Haven Construction
15 at that time until the closing of the home.

16 Q. Okay.

17 A. So at that time Mill Haven Home owned the property and
18 the structure.

19 Q. Do you know how close to completing that contract or
20 the signing over to the homeowners, how close you were in that?

21 A. We were approximately 14 to 21 days out.

22 Q. Okay, so was the home complete, then, nearly complete?

23 A. The home was in a state where the only items left to
24 do were to put some cabinet doors on, get some counter tops,
25 and put in carpet.

1 Q. Okay, now did you go through and assess the damage, or
2 how did you determine the amount of damage that was caused to
3 the home?

4 THE COURT: You know, I'm a little puzzled. I don't
5 want to cut off a witness. I want to hear from him, but you
6 just told me have a stipulated amount.

7 MS. ESTRADA: We do have a stipulated amount.

8 MS. YOUNG: Okay.

9 THE COURT: So why do I need --

10 MS. YOUNG: Okay, well, and the amount -- I just kind
11 of want him to go through, I guess, because the amount -- there
12 is some out-of-pocket, there's some insurance. So I guess I
13 was getting to that, but I can I guess get there or not even go
14 there.

15 THE COURT: It doesn't make any difference to me.

16 MS. YOUNG: Okay.

17 THE COURT: Total damage is 10,629. Some of it's going
18 to go -- it's going to go back to whoever paid it.

19 MS. YOUNG: Okay, okay.

20 THE COURT: So --

21 MS. YOUNG: So I guess I'll just --

22 THE COURT: But the percentage might be helpful if we
23 have to allocate in the future.

24 MS. YOUNG: Okay, I guess then we can kind of just
25 streamline it.

1 Q. BY MS. YOUNG: What was the, I guess, any damage or
2 cost to you or the homeowners in -- when this happened? What
3 suffrage did you have based off that?

4 A. There wasn't any damage or cost to the homeowner
5 themselves. The costs that Mill Haven incurred that was not
6 covered by insurance was simply the fact that No. 1, we had a
7 deductible that we were -- we had to pay, of course; and then--

8 Q. How much was that?

9 A. That was \$1,000. Then the other was the fact that the
10 home being completed, we did not complete that home within our
11 allotted contract date. So we had to pay for -- not only for
12 the construction loan that went beyond completion date, but we
13 also had to pay the interest for that, and that totaled roughly
14 about \$1,700.

15 Q. Okay.

16 THE COURT: Is that included in the 10,629?

17 Q. BY MS. YOUNG: If I said it was \$1,771.50; would that
18 sound correct?

19 A. (No verbal response).

20 MS. YOUNG: Okay, so yes, that -- that amount of --
21 that's included.

22 THE COURT: So that's in that total, okay.

23 MS. YOUNG: The thousand dollar deductible is not.

24 THE WITNESS: Correct.

25 MS. ESTRADA: It is -- it is in there. It's at the

1 top.

2 MS. YOUNG: Well, it's in the top, but this amount says
3 11,629.

4 MS. ESTRADA: Okay.

5 MS. YOUNG: So and that's another reason I guess I
6 was kind of going there is we did have an agreement of 10,629,
7 but when Mr. Miller came in today, his invoice, including the
8 deductible, shows \$11,629. So I don't think that 10 was --

9 THE COURT: I need to know whether you're standing by
10 the stipulation or not.

11 MS. ESTRADA: I'm standing by the stipulation, your
12 Honor. That's what we agreed to.

13 MS. YOUNG: I would be asking for the 11,629 based
14 off not knowing that there was -- that the deductible wasn't
15 included in that 10,629.

16 THE COURT: Unfortunately you're telling me based upon
17 a deal that you made that you shouldn't have made. Doesn't
18 work that way.

19 MS. YOUNG: Okay, and that's fine.

20 THE COURT: Okay.

21 MS. YOUNG: I was going to ask for it just to ask for
22 it because we were here with that information, but --

23 THE COURT: Okay.

24 MS. YOUNG: -- I understand that we had already come to
25 an agreement.

1 THE COURT: I get it.
2 MS. YOUNG: Okay.
3 THE COURT: Okay, anything else?
4 MS. YOUNG: That's it.
5 THE COURT: Do you want to cross?
6 MS. ESTRADA: No, your Honor.
7 THE COURT: Thank you so much for coming today. Appre-
8 ciate your testimony.
9 Anything else from the State?
10 MS. YOUNG: Nothing else from the State.
11 THE COURT: Ms. Estrada.
12 MS. ESTRADA: Your Honor, I believe the Court has the
13 documentation. I would just like to hear a little bit of
14 testimony in support of that from Mr. Thomas.
15 THE COURT: Yeah. Mr. Thomas, stand and put -- raise
16 your right hand. She's going to place you under oath.
17 COURT CLERK: Do you solemnly swear the testimony you
18 shall give in the case now pending before the Court will be the
19 truth, the whole truth and nothing but the truth, so help you
20 God?
21 THE WITNESS: Yes.
22 THE COURT: Have a seat right over here.
23 THE WITNESS: Okay.
24 ///
25 ///

1 DALTON THOMAS,
2 having been first duly sworn,
3 testified as follows:
4 DIRECT EXAMINATION
5 BY MS. ESTRADA:
6 Q. Please state your name.
7 A. Dalton Thomas.
8 Q. I'm sorry?
9 A. Dalton Thomas.
10 Q. Can you spell the first and last name.
11 A. D-a-l-t-o-n T-h-o-m-a-s.
12 Q. Okay, Mr. Thomas, you've provided a affidavit to the
13 Court concerning your financial situation; is that correct?
14 A. Yes.
15 Q. Okay, contained in that you say that you are working
16 for Little Caesars; is that correct?
17 A. Yes.
18 Q. How long ago did you get that job?
19 A. About two weeks.
20 Q. Okay, so have you got --
21 A. Two weeks ago.
22 Q. -- have you got your first paycheck?
23 A. Not yet. This Sunday.
24 Q. This Sunday. So you don't know what is -- so any
25 information that's contained in the affidavit is the gross

1 amount, what you're anticipating?

2 A. Yeah.

3 Q. But you don't really know how much you're going to be

4 making?

5 A. (No verbal response).

6 Q. You're on AP&P supervision; is that correct?

7 A. Yes.

8 Q. Have you been meeting with your probation officer?

9 A. Yes.

10 Q. Is he making you pay back on the fines and fees yet?

11 A. No, not yet.

12 Q. Right now you're just paying the monthly AP&P super-

13 vision?

14 A. Yeah.

15 Q. But that's going to change now that you're employed;

16 is that right?

17 A. Yeah.

18 Q. Are you in any kind of treatment?

19 A. Yeah, substance abuse and mental -- psych -- yeah, I

20 don't know how to say it right.

21 Q. That's fine. So you're getting treatment. Do you

22 have insurance?

23 A. Yeah.

24 Q. Do you pay for that insurance?

25 A. No, my mom does.

1 Q. Your mom's paying for that. Okay, right now where are
2 you living?

3 A. With my dad in Lehi.

4 Q. Do you have to pay for food or anything right now?

5 A. Not yet, not yet.

6 Q. Now? Not --

7 A. Not yet, sorry.

8 Q. But --

9 A. I'm going to (inaudible) when I get income.

10 MS. ESTRADA: Okay, nothing further.

11 MS. YOUNG: Just a few questions.

12 CROSS EXAMINATION

13 BY MS. YOUNG:

14 Q. So at this time are you paying any bills or rent or
15 anything?

16 A. No.

17 Q. Are you going to be anytime?

18 A. No.

19 Q. No? Okay, do you have a cell phone?

20 A. Yeah.

21 Q. How much is that?

22 A. \$50 a month.

23 Q. Do you pay for that?

24 A. Yes.

25 Q. Do you smoke?

1 A. Yes.

2 Q. How much do you spend on cigarettes a month?

3 A. I don't know.

4 Q. Okay.

5 A. I don't know the --

6 Q. About how many packs do you smoke?

7 A. A pack every other day.

8 Q. A pack a day, okay.

9 MS. YOUNG: Okay, thank you. Nothing further.

10 REDIRECT EXAMINATION

11 BY MS. ESTRADA:

12 Q. Okay, so it's important that you listen to the

13 questions and answer.

14 A. Yeah.

15 Q. Okay, so you were just asked if you were going to have

16 to pay anything towards food or rent in the future, and you

17 said, "No."

18 A. Oh, I thought she said right now, sorry.

19 Q. Okay, so are you going to have to pay anything towards

20 rent in the future?

21 A. No.

22 Q. Are you going to have to pay anything towards food in

23 the future?

24 A. Yes.

25 Q. Okay, and when you said you smoke a pack, it's every

1 other day; is that correct?

2 A. Yes.

3 MS. ESTRADA: Okay, nothing else.

4 UNIDENTIFIED SPEAKER: (Inaudible).

5 THE COURT: No, no, no, no, no. Stop, sir.

6 UNIDENTIFIED SPEAKER: (Inaudible).

7 THE COURT: No, no, no, no. Do you need a break to

8 talk to the gentleman? I don't know who he is, but he can't

9 speak from there and be on the record, so --

10 Q. BY MS. ESTRADA: Okay, do you have any other expenses

11 you have to pay for?

12 A. No.

13 Q. Do you have any medications you have to pay for?

14 A. Oh, yes, sorry. Like \$22 a month.

15 MS. ESTRADA: Okay. Can I take a break for just a

16 second.

17 THE COURT: (No verbal response).

18 MS. ESTRADA: I have nothing further for this witness.

19 I would like to call Clinton Wynn, his dad.

20 THE COURT: Okay, do you want to cross, Counsel?

21 MS. ESTRADA: Oh, did you want to --

22 MS. YOUNG: You can ask any questions you want. Have a

23 seat, sir.

24 MS. ESTRADA: Sorry.

25 ///

RE CROSS EXAMINATION

BY MS. YOUNG:

Q. We talked about you having to have to basically help with the grocery bill later on. Do you know how much you're going to be expected to help on that?

A. I don't.

Q. How many people are living in the house?

A. Four.

Q. Are you going to be expected to pay for you or for others?

A. Me.

Q. For you?

A. Yeah.

Q. Okay, and I just want to -- sorry, I had more than one question, I lied. Utilities, are you going to be paying any utility bills at the house?

A. No.

Q. No. So you'll -- you're responsibility at the house will just be food for you?

A. Yes.

MS. YOUNG: Okay, thank you.

THE COURT: Thank you.

MS. ESTRADA: Clinton Wynn.

THE COURT: Come on up.

MS. ESTRADA: This is the defendant's father.

1 THE COURT: Okay, great. Come on up, Mr. Wynn.

2 MS. ESTRADA: You need to raise your hand.

3 COURT CLERK: You do solemnly swear the testimony you
4 shall give in the case now pending before the Court will be the
5 truth, the whole truth and nothing but the truth, so help you
6 God?

7 THE WITNESS: Yes.

8 THE COURT: Have a seat.

9 CLINTON WYNN,

10 having been first duly sworn,

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ESTRADA:

14 Q. Please state your name.

15 A. Clinton Wynn.

16 Q. What is your relationship to Dalton Thomas?

17 A. He's my son.

18 Q. Does he reside with you right now?

19 A. Yes, he does, ma'am.

20 Q. You were sitting in the courtroom and heard his
21 testimony?

22 A. Yes.

23 Q. That he's not paying for anything right now. Is it
24 anticipated that he is going to start paying for things in the
25 future?

1 A. Yes. I told him once he found employment and started
2 getting his paychecks, his income coming in, that he would --
3 that we'd sit down and evaluate what, you know, with his fines
4 and his medication, he's now having to pay to -- with what he
5 would be able to help towards, you know, food for himself, and
6 also, you know, what he can towards the utilities, the electric
7 and, you know, while he's living there with us.

8 Q. So he is going to be expected to --

9 A. Yes, he is.

10 Q. -- to help with utilities?

11 A. Yes, but as of right now we don't know the amount,
12 because he just started his employment, hasn't got the income
13 coming in.

14 Q. How does he get around?

15 A. Me.

16 Q. You drive him?

17 A. Yes.

18 Q. Is he going to be expected to pay for gas and such
19 like that?

20 A. When he can, yeah. You know, it's not going to be
21 written in stone. I'm on disability, so I don't have my own
22 employment -- you know, job that I have to get to and stuff, so
23 I have the time to be able to help him out and get him to where
24 he needs to get to.

25 MS. ESTRADA: Okay, nothing further.

1 THE COURT: Cross?

2 MS. YOUNG: No questions.

3 THE COURT: Thank you. Appreciate you coming. Appre-
4 ciate your testimony.

5 THE WITNESS: I apologize for --

6 THE COURT: Oh, no, you're fine. Anything else?

7 MS. ESTRADA: No, your Honor.

8 MS. YOUNG: Nothing further from the State.

9 THE COURT: Okay. All right, well, here's what I'm
10 going to do. Total damages are as stipulated, 10,629. I've
11 pulled up an amortization schedule. Current rates running
12 right around 3 percent, little more, little less for mortgages
13 on homes. I notice that the defendant is 22, just turned 22.

14 I think -- I don't see any reason he can't pay this
15 off if I give him enough time. I think he should. It seems
16 to me that having this paid off and behind him by the time he
17 turns 30 is a reasonable time to have that done. So if I take
18 \$10,629 and I amortize it over 8 years at 3 percent, that makes
19 his payment \$125 a month.

20 So \$125 a month on \$10 an hour I think is doable.
21 I think that's within the reasonable realm of possibility. I
22 expect his income to improve in the next 8 years. He's going
23 to get his GED. He's going to get a better job five years from
24 now than he has now; but even at what he has now, at \$10 an
25 your, even though it's part-time, with the limited expenses

1 right now, I'm satisfied that a \$125 a month payment to resti-
2 tution is reasonable.

3 So my order is going to be probation is modified.
4 I'm going to extend probation. I'm going to make it right
5 now eight years. Although I'm telling you right now that the
6 supervised probation is going to terminate when the treatment
7 objectives are reached. So all that will be left is Court
8 probation to pay the restitution.

9 So you're going to work with Adult Probation and
10 Parole first, and you're going to pay their supervision fees.
11 You're not going to pay any Court fines or fees until the
12 restitution is paid. So all payments you make are going to
13 go to restitution first. You're going to pay a minimum of
14 \$125 a month plus the monthly supervision fee, all right?

15 Those payments are going to go to restitution in the
16 amount of at least 125 a month. It's going to accrue interest
17 at 3 percent per annum on the interest. All the interest
18 payments are going to go to the victim. I'm going to pay out-
19 of-pocket first to the construction company; but we will need
20 the insurance contact information so that the insurance company
21 will get paid second. So the priority of those payments will
22 go in that manner.

23 MS. ESTRADA: Can I just put a few things on the
24 record.

25 THE COURT: You may.

1 MS. ESTRADA: Okay, I have serious concerns about my
2 client's ability to pay. No. 1, he's indicated to the Court
3 that he's receiving mental health treatment right now. He's
4 receiving other treatment. The factors that the Court's to
5 consider is to what he pled to and the total amount, yes; but
6 the Court's also to consider the financial resources of the
7 defendant, which right now are at \$1,000 a month gross, and we
8 don't know that he's going to be able to get better employment.
9 It's supposed to be considered the financial resources at this
10 time.

11 No. 3 is the burden payment (inaudible) imposed on the
12 defendant, extending his probation for eight years so that he
13 can pay this full \$10,000, I believe imposes a great burden on
14 the defendant. His ability to pay, as is indicated right now,
15 he's only working at 25 hours a week, a \$10 an hour job. Based
16 on his lack of education and his lack of employment, and now
17 his felony conviction, it does not appear that there is going
18 to be any great change.

19 The rehabilitative effect on the defendant, I believe
20 that having to pay some -- I would argue to the Court that
21 having to pay some restitution would be appropriate, the amount
22 that the business was actually out, which was \$2,700, would
23 have a rehabilitative effect; but when the Court imposes on
24 someone with mental difficulties, and the lack of education
25 and lack of job constraint that the defendant has, that there

1 isn't a rehabilitative effect in terms of extending their
2 probation eight years to pay this astronomical amount for
3 someone who's indigent.

4 The Court is to consider other circumstances that
5 may make restitution inappropriate. I believe some restitution
6 is appropriate, but I make the argument to the Court that the
7 full amount is not.

8 THE COURT: Thank you. Anything else from the State?

9 MS. YOUNG: I'm happy submitting it.

10 THE COURT: All right. Well, my findings are that it is
11 not an astronomical amount. I think it's a reasonable amount
12 for him to pay. A thousand dollars a month is an estimate.
13 He is making \$10 an hour. He's got 25 hours a week. I view
14 that as a threshold. I know he has the struggles and he has
15 disabilities, but I'm satisfied that he's capable of earning at
16 least that much from now going forward.

17 I don't see a rational reason not to attempt to make
18 the victim whole. I don't see a reasonable distinction between
19 the insurance company and the contractor, except to the extent
20 that the contractor should be paid first. So I have looked at
21 those factors. I'm satisfied that my order is reasonable and
22 appropriate.

23 We'll modify the probation to show. I would like to
24 review this automatically in 36 months. So I don't want to
25 lose sight of this. It is my intent to terminate supervised

1 probation as soon as any legitimate supervision are terminated.
2 What that means is if you -- if your job gets better, if you
3 find a way to pay this faster, you certainly can. You don't
4 have to pay on this until you're 30, if you get a better job or
5 find another way to pay it off.

6 It's a \$10,000 bill. It's the cost of a used car.
7 It's the cost of something that someone your age might reason-
8 ably buy. You're going to pay for it without the benefit
9 because you chose to go in and trash this house. It's as
10 simple as that. So that's my order. Thank you. We'll be in
11 recess until this afternoon.

12 COURT BAILIFF: All rise.

13 (Hearing concluded)