

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-424

MAY TERM, 2006

State of Vermont

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APPEALED FROM:

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v.

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District Court of Vermont,

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Unit No. 2, Chittenden Circuit

Aaron Hall

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DOCKET NO. 986/987-2-05 Cncr

Trial Judge: Linda Levitt

In the above-entitled cause, the Clerk will enter:

Defendant appeals an order of the district court awarding \$7,353 in restitution to the victim of defendant=s crime to cover future medical costs. We affirm.

The following uncontested facts were found by the district court during a hearing on the matter of restitution. Defendant assaulted the victim, injuring the victim=s face and jaw. The victim had some of these injuries treated immediately but still requires additional dental work to permanently repair his jaw and teeth. The

victim has not yet undergone these procedures because he has neither dental insurance nor funds to pay for the procedures out-of-pocket. At the hearing, the victim presented evidence of the cost of the procedures in the form of an estimate from his dentist. Defendant did not contest the reasonableness of the estimate. Rather, defendant argued that because the procedures had not yet been performed and because it was not clear whether the victim would be operated on in Vermont or Florida, the amount of restitution was inherently speculative and therefore any award would exceed the court=s statutory authority. The district court rejected this argument, concluding that defendant=s assault had caused the victim=s need to have his teeth repaired and realigned, and that the fees estimated by the dentist were reasonable and necessary. Accordingly, the district court awarded \$7,353 to the victim for his future medical costs.

On appeal, defendant argues that 13 V.S.A. ' 7043, the statute governing restitution awards, allows compensation only where the amount of a victim=s loss is easily ascertained. According to defendant, because the medical costs in this case have yet to be incurred, they are not easily ascertained and fall outside the scope of the court=s statutory authority to make a restitution award. In reviewing the district court=s decision on restitution, we will affirm an award that is supported by the evidence and does not constitute an abuse of discretion. State v. VanDusen, 166 Vt. 240, 245 (1997).

Under ' 7043, A[r]estitution must be considered whenever a crime victim has suffered a material loss or has incurred medical expenses, and it may include the return of property or compensation >for damages to the victim=s property or person.@ We have interpreted the statute as restricting recovery to Aliquidated amounts which are easily ascertained and measured.@ State v. Jarvis, 146 Vt. 636, 638 (1986). Defendant cites a number of cases where we have overturned a restitution award because the amount of loss suffered by the victim was not easily ascertainable. For example, we have not permitted restitution awards for pain and suffering or for lost future child support. See id., 146 Vt. at 639 (pain and suffering); State v. Fontaine, 167 Vt. 529, 532 (1998) (lost future child support). We have further held that while lost profits may theoretically be recoverable under the restitution statute, there must be a reasonable evidentiary basis for the award. See State v. May, 166 Vt. 41, 43-44, 45 (1996) (disallowing restitution award for lost profits where calculation was based on speculation and conjecture).

The instant case is readily distinguishable from the above examples because the future medical costs sought by the victim in this case are not inherently uncertain. Specifically, victim=s claim for his future dental work in this case is not intangible, like the claim for pain and suffering in Jarvis, nor does it seek compensation based on a potentially changing sum forecast far into the future, like the claim for lost future child support in Fontaine. Rather, the claim is based on an identified set of medical procedures, the cost of which is susceptible to estimation. Additionally, in May, we denied restitution not because the award sought was categorically excluded from the statutory scheme, but because the calculation of an award was based on speculation and conjectureCthe victim in that case presented no accounting records and admitted he had no idea how much business was lost as a result of the theft. By contrast, in the instant case the dentist=s estimate allowed the district court to calculate the victim=s estimated loss with reasonable certainty. See May, 166 Vt. at 45 (A[O]nly a reasonable certainty of the estimated loss is required . . . .@).

The district court=s award was supported by the evidence and did not exceed the scope of its authority under the restitution statute. The district court did not abuse its discretion in awarding restitution.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice