

**IN THE APPELLATE COURT
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION, PABLO, MONTANA**

CONFEDERATED SALISH AND
KOOTENAI TRIBES,

Plaintiff/Appellee,

vs.

THOMAS STEELE,

Defendant/Appellant.

Appeals Cause No. AP-19-0830-CR

OPINION

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,
Honorable Bradley A. Pluff, presiding.

Appearances:

Thomas Meyers, Tribal Prosecutors Office, Confederated Salish & Kootenai
Tribes, Pablo, MT, for Plaintiff/Appellee

James Gabriels, Tribal Defenders Office, Pablo, MT, for Defendant/Appellant

Before: TENENBAUM, McDONALD, AND McDONALD

Opinion by Associate Justice Tenenbaum

Before this Court is Defendant/Appellant's appeal of the Tribal Court's
restitution determination. For the reasons set forth below, we affirm.

Background

On July 25th, 2019, the Tribal Prosecutor's office filed a criminal complaint charging Defendant Thomas Steele with a single count of theft.

According to the probable cause affidavit, on May 20th 2019, Lake County Sheriff's Deputy Matthew Finley was contacted by Nicole Hadley in the parking lot of Wilson Foods in Arlee, Montana. Ms. Hadley told Deputy Finley that her wallet was stolen inside the store. Deputy Finley had been inside the store when Nicole had lost her wallet, and had seen her talking with Alan Moore at that time.

After leaving the store to clear a call in Pablo, Deputy Finley contacted Wilson Foods in Arlee and asked to review the store video. The worker did not have the video ready at that time, but they informed Deputy Finley that someone returned Ms. Hadley's wallet, saying they found it outside. The worker said money was missing out of the wallet. Deputy Finley called Ms. Hadley, who confirmed that she had her wallet back and that \$100 was missing out of it.

The next day, on May 21, 2019, Deputy Finley viewed the video and describes it as such:

Nicole gets a phone call and answers it. Nicole walks away and leaves the purse on the counter. You can see the purse on the counter. Alan and the man walk into the store. They go to the drinks and Alan grabs a drink. Alan and the male walk back towards the front to pay for the drink Alan got. The male with Alan was dressed in a white colored shirt and blue jeans. Alan goes and pays for his drink.

The other male sees the wallet and looks around a few times to see if anyone was near the fountain machine. The male grabs the wallet and walks towards

Alan at the clerk. I walk into the store and the male sees me and turns and faces the clerk. The male starts tapping the counter with his foot. I walk past the male and he turns and walks fast out to his vehicle he came in with Alan. Alan walks out and gets in the vehicle. You can see the other male have the wallet when he jumps inside the vehicle. The vehicle was a red and black Dodge Ram single cab vehicle.

Alan and the other male leave the store. They later return and the male goes into the store wearing a green coat and a beanie. The male buys cigarettes with cash then leaves in a white vehicle. A male later comes in with the wallet and said someone found it in the parking lot.

Alan (who works with Nicole at Grey Wolf Peak Casino) later told Nicole that the man he was with was Thomas Steele, his cousin. Nicole shared this information with Deputy Finley, who looked at a photograph of Mr. Steele on Facebook and confirmed that he was the male in the video who stole Nicole's wallet.

On October 17, 2022, the Defendant Thomas Steele pleaded guilty to a charge of theft. He was sentenced to 15 days in Tribal jail with all 15 days suspended on the condition that he obey all laws, pay a \$100 fine, and pay restitution to the victim, Nicole Hadley, in an amount determined by a restitution officer within 60 days.

Two days later, on October 19th, 2022, the restitution filed a report to the Court finding the defendant liable to pay \$100 in restitution to Ms. Hadley. The next day, Mr. Steele filed an Objection to the Restitution, asserting the restitution

report “does not show why that amount of restitution represents the defendant’s liability,” and “[t]he victim is not entitled to a windfall.”

On October 26, 2022, the Tribes filed a Response to the Objection for Restitution stating the Tribal Prosecutor’s office spoke with the restitution officer, who spoke with Ms. Hadley, who said that Mr. Steele stole \$100 from her purse. The Tribes also stated they’ve requested the restitution officer “include more detail explaining the basis for the restitution amount” in future reports. The next day, Mr. Steele filed a reply asserting the Tribes failed to give a reason for the restitution amount, and requested a sworn affidavit from Ms. Haley.

On October 31st, 2022, the Tribes filed a Sur-Reply arguing the request for a sworn affidavit is “onerous and unreasonable.” The Tribes repeat their request for more detailed restitution reports in the future, noting “[t]he Restitution Officer’s job is to research and report restitution.” The next day Mr. Steele filed a motion to strike the Sur-Reply, noting the Tribes failed to ask leave of the court to file a sur-reply. The Tribes filed an objection to Steele’s motion November 15th arguing that the defendant may request a restitution hearing. Steele filed a request for a restitution hearing the next day.

On January 30, 2023, a restitution hearing was held in Tribal Court. The restitution officer testified at the hearing that she arrived at the restitution amount first by reading the police report and then by contacting the victim, who told her

over the phone that when her purse was returned by Steele, it was missing \$100.

Mr. Steele testified at the hearing that “there was no money in the wallet.”

At the conclusion of the hearing, the Court weighed the restitution officer’s testimony against that of the defendant, and concluded that “I think a hundred dollars is probably what’s missing here.” He then ordered Steele pay \$100 in restitution to the victim. The following day, the Court issued a written order for the \$100 restitution amount, reasoning:

The Court finds that the Restitution Officer conducted an investigation to determine the amount of restitution to be paid to the victim in this matter. That investigation was a standard investigation and was conducted as any other restitution investigation has or would be conducted for this Court. There is no evidence that the Defendant (sic) is attempting to gain a “windfall” from the incident.

The Court, when taking conflicting testimony, has the duty to weigh the credibility of each witness. In this case, the Court finds that testimony given by Restitution Officer Wildcat is more credible than that given by the Defendant.

Mr. Steele filed a timely notice of appeal.

Issue on Appeal

1. Did the Tribal Court err when it ordered \$100 in restitution to the victim who had her wallet stolen?

Standard of Review

The standard of review for restitution determination is abuse of discretion. *United States v. Peterson*, 538 F.3d 1064, 1074 (9th Cir. 2008).

Discussion

The defendant argues on appeal that the restitution amount “was frustrated by a lack of evidence,” and the court “misapprehended the efficacy of the testimonial evidence” at the hearing. The restitution determination, he argues, should therefore be reversed.

The Tribes, on appeal, agree with Steele. The parties’ lack of disagreement at this stage, while notable, does not resolve the case. While briefing is helpful, “[e]very [Appellate Court] decision shall be based on the record established in the court below.” CSKT Laws Codified 1-2-804.

Our courts follow the Federal Rules of Evidence in criminal matters. CSKT Laws Codified 2-2-1004. The Federal Rules of Evidence explicitly do not apply at sentencing. Fed. R. Evid. 1101(d)(3). State courts similarly avoid stringent evidentiary requirements at the sentencing stage. *See State v. Dunkerson*, 2003 MT 234, ¶ 26 (hearsay evidence generally admissible during sentencing); *People v. Lehman*, 247 Cal. App. 4th 795, 803 (2016) (“[T]he prosecution was not required to present victim testimony or affidavits or expert declarations in connection with the restitution hearing.”)

A lower court's factual findings as to the amount of restitution owed will be disturbed only if they are clearly erroneous. *State v. Aragon*, 2014 MT 89, ¶ 9. A finding is clearly erroneous if “it is not supported by substantial evidence, the court has misapprehended the effect of the evidence, or our review of the record convinces us that a mistake has been committed.” *State v. Spina*, 1999 MT 113, ¶ 12. Substantial evidence is evidence that a reasonable person could accept as sufficient to support a conclusion. *State v. Jent*, 2013 MT 93, ¶ 10 (“[I]t consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.”)

Could “a reasonable person accept as sufficient” the restitution hearing evidence and conclude Steele stole \$100 from Ms. Hadley’s wallet? Was there more than “a mere scintilla” of evidence presented at the restitution hearing? We believe so. At the restitution hearing, the court heard testimony from the restitution officer who called the victim to verify the \$100 amount recorded in the police report. The defendant testified the wallet had no money. The record reflects that the trial court carefully weighed the witnesses’ credibility and concluded Steele took \$100 from the wallet.¹ Therefore, the trial court did not abuse its discretion when determining the restitution owed by Mr. Steele.

¹While sworn testimony from the victim herself may have strengthened the restitution determination, neither party points to a source of law suggesting such evidence is necessary to support a restitution
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Conclusion

IT IS THE ORDER OF THIS COURT that the Tribal Court's decision is
AFFIRMED.

Ordered this 26th day of June, 2024.



Honorable Danny Tenenbaum
Associate Justice

determination. This Court cannot on its own set a higher evidentiary standard than what is currently present in law.

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Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the *Opinion* to the persons first named therein at the addresses shown below via email this 26th day of June, 2024.

James Gabriels
CSKT Defenders Office
James.Gabriels@cskt.org

Thomas Myers
CSKT Prosecutors Office
Thomas.Myers@cskt.org

Malia Hamel
CSKT Tribal Court
Malia.Hamel@cskt.org


Abigail Dupuis
Appellate Court Administrator