

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1289**

State of Minnesota,
Respondent,

vs.

Tami Lee Feldhake,
Appellant.

**Filed June 9, 2025
Reversed and remanded
Ede, Judge**

Chippewa County District Court
File No. 12-CR-23-260

Keith Ellison, Attorney General, St. Paul, Minnesota, and

Matthew D. Haugen, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn Lockwood, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from the district court's restitution order following a criminal-vehicular-operation conviction, appellant argues that the court abused its discretion because (1) respondent did not provide adequate evidentiary support for two of the victim's claimed out-of-pocket expenses and (2) the court did not consider appellant's ability to

pay. Because the district court abused its discretion by ordering appellant to pay restitution for an amount that lacks sufficient evidentiary support and by failing to expressly state that it considered appellant's ability to pay, we reverse the restitution order and remand for further proceedings consistent with this opinion.

FACTS

Respondent State of Minnesota charged appellant Tami Lee Feldhake with several criminal offenses arising from a vehicle collision that Feldhake caused on September 25, 2022. Feldhake entered a plea agreement with the state and pleaded guilty to one count of criminal vehicular operation resulting in great bodily harm, a violation of Minnesota Statutes section 609.2113, subdivision 1(6) (2022). As part of her sentence, the district court ordered Feldhake to pay restitution, which is the subject of this appeal. The following recitation of facts is based on the record of the plea, sentencing, and contested restitution hearings.

Plea Hearing

At the plea hearing, Feldhake admitted that she used a mixture of cocaine and fentanyl before operating her vehicle during the underlying incident on September 25, 2022. While driving, Feldhake swerved into an oncoming lane and collided with the victim (D.J.K.) and his vehicle. Feldhake did not dispute that the crash left D.J.K. with serious injuries, including “a collapsed lung, broken ribs, and other broken bones.” After finding there was a sufficient factual basis to support Feldhake's plea of guilty to the charge of criminal vehicular operation resulting in great bodily harm, the court accepted the plea agreement and ordered a presentence investigation report (PSI).

Sentencing

At the sentencing hearing, the district court noted that there was a PSI and sentencing worksheet “in the file.” The PSI generally outlined Feldhake’s education and employment history. But the PSI did not otherwise include information on Feldhake’s financial prospects, assets, debts, or whether she currently had a steady income. Among several suggestions for treatment, the PSI recommended that Feldhake “pay restitution as certified by the [district c]ourt.”

The district court heard from D.J.K., who presented a victim impact statement. D.J.K. explained that, on the day of the crash, he was headed to a job for his self-owned and operated trucking business. Because of the crash, D.J.K. suffered significant injuries including a collapsed lung, sternal fracture, eighteen rib fractures, and various other broken bones. D.J.K. stated that, after his hospital stay, he could not walk for three months and could not live independently for six months.

The district court stayed the imposition of sentence and placed Feldhake on supervised probation for five years, ordering her to pay restitution to D.J.K. “as certified” by the state. And the district court required that “[a]ll payments . . . be applied to restitution and then to fines and fees,” with “all financial obligations due six months from” the date of the sentencing hearing.

The state later filed a certificate for restitution, requesting that Feldhake pay \$63,668 for out-of-pocket costs incurred by D.J.K. Feldhake filed a timely objection and affidavit, asserting that the requested restitution amount was “excessively unreasonable” and that she “[did] not have the ability to pay this amount.” She also claimed the state failed to

sufficiently describe or itemize the amounts requested and did not prove that D.J.K.'s losses were directly related to her crime. The district court set the matter for a contested restitution hearing.

Contested Restitution Hearing

At the contested restitution hearing, the state introduced into evidence an itemized spreadsheet of D.J.K.'s costs. The spreadsheet and its figures were prepared by K.K., who is D.J.K.'s wife and the person who handled the family's finances. The spreadsheet listed D.J.K.'s "total paid out-of-pocket" costs as \$219,273.05. Among other items contributing to that total amount was D.J.K.'s "lost wages," which he claimed were \$200,000. The \$219,273.05 in "total paid out-of-pocket" costs was offset by a civil settlement D.J.K. received in the amount of \$155,605.05, which left D.J.K. with \$63,668 in uncovered costs that he sought in restitution.

Although the state's certificate of restitution did not include a request that Feldhake pay \$10,000 in rental-home construction costs, K.K. added that amount to the bottom of the itemized spreadsheet that the district court received at the hearing. D.J.K. testified that the \$10,000 request stemmed from costs for work on a rental home that he had purchased before the crash. He said that, before the incident, he had personally worked on the home and that, afterward, he had to hire M&M Construction to finish the job. D.J.K. also discussed a \$5,300 invoice that he had received from M&M Construction, which the district court admitted into evidence. The invoice provides that D.J.K. owed M&M Construction for the labor and materials they used in finishing his rental home. But the invoice neither states whether the \$5,300 amount had been paid nor distinguishes between

labor and material costs. D.J.K. testified that he had “already bought” the materials for the home and that he was seeking reimbursement only for the cost of labor by M&M Construction.

The district court found that the state satisfied its burden in certifying restitution and ordered Feldhake to pay \$73,668 to D.J.K. This amount encompassed the state’s original request for \$63,668—which included D.J.K.’s lost wages—and the previously “unnoticed request for \$10,000 for labor and materials to complete the work on D.J.K.’s rental home.”

The district court also instructed the parties to determine a restitution repayment schedule among themselves, leaving that section of the restitution order blank. And the district court concluded the hearing by saying:

If the restitution isn’t paid by the . . . time the probation is completed, the balance may simply be reduced to a civil judgment. The idea is that the defendant is required, and whether it’s \$30,000 or \$73,000, the schedule of payments may not vary. I mean, it isn’t really dependent on the total amount, it’s dependent on ability to pay.

This appeal follows.

DECISION

Feldhake argues that the district court abused its discretion when it ordered her to pay \$73,668 in restitution because (1) the state did not adduce sufficient evidence to support D.J.K.’s claim for (a) lost wages and (b) construction costs relating to his rental home and (2) the court did not consider her ability to pay. Although the state did not submit a responsive brief, we nonetheless determine the case on the merits. Minn. R. Civ. App. P.

142.03 (providing that, when a “respondent fails or neglects to serve and file its brief, the case shall be determined on the merits”).

Except under circumstances not relevant here, a district court may stay imposition of sentence and place a defendant on probation with supervision on terms the court prescribes, including intermediate sanctions such as restitution. Minn. Stat. § 609.135, subds. 1(a)(2), (b) (2022). Appellate courts generally review a restitution order for an abuse of the district court’s broad discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). And “[a]ppellate courts defer to district court credibility determinations.” *State v. Alexander*, 855 N.W.2d 340, 344 (Minn. App. 2014).¹

But a district court’s discretion is not unfettered—instead, it is “constrained by the statutory requirements” set forth in Minnesota Statutes section 611A.045 (2024), which outlines the procedure for issuing restitution orders. *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021). Section 611A.045 requires district courts to consider two factors in determining whether to order restitution and the appropriate amount to award. Minn. Stat. § 611A.045, subd. 1(a)(1), (2). First, district courts must analyze “the amount of economic loss sustained by the victim as a result of the offense,” and second, courts must consider “the income, resources, and obligations of the defendant.” *Id.* “[D]etermining whether an [order] meets the statutory requirements for restitution is a question of law that is fully reviewable by the appellate court.” *State v. Ramsay*, 789 N.W.2d 513, 517 (Minn. App.

¹ Cf. *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022) (explaining that, in the context of a sufficiency-of-the-evidence challenge to a guilty verdict based solely on direct evidence, “[t]he appellate court defers to the fact-finder’s credibility determinations and will not reweigh the evidence on appeal”).

2010) (quotation omitted). Whether the district court has the authority to order restitution or whether it fulfilled its statutory obligations are therefore questions of law that we review de novo. *Andersen*, 871 N.W.2d at 913; *see also Wigham*, 967 N.W.2d at 662.

By contending that the district court abused its discretion and improperly awarded D.J.K. \$73,668 for expenses that were not directly caused by the offense (i.e., lost wages and rental-home construction costs), and by asserting that the district court did not consider her ability to pay, Feldhake challenges both of the section 611A.045 factors. Below, we address each argument in turn.

I. The district court did not abuse its discretion by ordering Feldhake to pay restitution for D.J.K.’s lost wages, but did abuse its discretion by ordering Feldhake to pay D.J.K.’s rental-home construction costs.

Feldhake asks that we reduce the restitution award because the state failed to prove that the \$200,000 it requested for D.J.K.’s lost wages—an amount on which the ultimate award of \$73,668 was based—was accurate. And Feldhake maintains that D.J.K.’s claim for \$10,000 in rental-home construction costs was improperly included in the restitution order because it was not supported by the record.

Restitution is proper so long as it is not “so attenuated in its cause that it cannot be said to result from the defendant’s criminal act.” *State v. Palubicki*, 727 N.W.2d 662, 667 (Minn. 2007); *see also State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019) (explaining that “a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime” (footnote omitted)). In other words, a district court’s decision to order restitution is appropriate when a victim’s losses are a “reasonably foreseeable result of, and were directly caused by, [the defendant’s]

actions.” *State v. Maxwell*, 802 N.W.2d 849, 853 (Minn. App. 2011), *rev. denied* (Minn. Oct. 26, 2011). Disputes surrounding the appropriateness and “proper amount or type of restitution must be resolved by the court by the preponderance of the evidence.” Minn. Stat. § 611A.045, subd. 3(a). It is the state’s burden to prove the amount of the victim’s losses and the appropriateness of a restitution award. *Id.* Even when a district court finds that the state has met this burden, the court’s decision to award restitution “must be supported by facts on the record.” *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014), *rev. denied* (Minn. Apr. 15, 2014).

A. Lost Wages

Feldhake’s argument that the district court abused its discretion by basing the restitution award in part on D.J.K.’s request for \$200,000 in lost wages is unavailing.

In her appellate brief, Feldhake concedes that “parts of the restitution request, such as . . . D.J.K.’s lost wages, follow naturally from [her] offense.” And the record establishes that D.J.K.’s lost wages were a “reasonably foreseeable result” of Feldhake’s conduct the day of the underlying incident. *See Maxwell*, 802 N.W.2d at 853. Consistent with subdivision 3(a) of section 611A.045, the state supported its restitution request at the restitution hearing by adducing evidence, including the testimony of D.J.K. and K.K., as well as the itemized spreadsheet that K.K. prepared. Based on the record before it, the district court made detailed findings, including credibility determinations, and explained its decision—both orally at the end of the hearing and in its written restitution order—that the state had met its burden by a preponderance of the evidence. *See id.*

At the hearing, the district court stated:

THE COURT: All right. I find the State has sustained its burden of proving the amount of restitution claimed.

I order restitution in the amount of \$73,668 and I make the finding based on these things.

. . . I'll talk about the wage lost first. . . . [F]irst of all, [K.K.] was a very credible witness. She testified . . . generally about the receipts of [D.J.K.] The translation . . . of tax filings to actual income, obviously, involves questions of . . . the timing of taking of certain income and deductions, depreciation as a non-cash expense must be factored in. In just rough terms, when I look at the 2022 Schedule C[,] there's gross income . . . of about \$84,000 for half a year. In 2021, there's gross income of \$144,500 approximately for a full year. And . . . if you consider that [D.J.K.] would have continued in 2022 to earn at the same rate, there would've been considerably greater gross income, perhaps even double that . . . or even more . . . and so, if you take even double that number, add it to the gross income in 2021, and then subtract depreciation taken for both years of close to \$200,000, you get an average of a little over \$100,000 of net cash income each year. And, obviously, this methodology is really imperfect. It doesn't directly track what went into [D.J.K. and K.K.'s] personal . . . checking account, . . . but I think it's probably more accurate than just looking at the net income or net profit from the Schedule Cs. So, when I take that, I get a little over \$150,000 for a one-and-a-half-year period. I credit [K.K.'s] testimony that the income was higher than that. It's corroborated by [D.J.K.'s] testimony. And . . . in fact, [D.J.K.] has limited earning capacity on a continuing basis and so . . . the wage loss really is a continuing thing. So, . . . all of that supports the calculations.

The district court also made the findings below regarding D.J.K.'s \$200,000 claim for lost wages in its written restitution order:

- D.J.K. "made \$144,500.00 gross income for the full year of 2021";
- "The crime occurred on or about September 25, 2022";

- D.J.K. “could not work after September 25, 2022, due to his substantial injuries”;
- D.J.K. “made \$84,000.00 in gross income for half the year in 2022”;
- D.J.K. “would have made more income in 2022 than in 2021 if he had been able to work the full year”;
- D.J.K. “makes \$150,000.00 [per each] one-and-[a]-half year period[,]” which the district court determined “by doubling the amount of gross income earned in 2022, adding it to the gross income in 2021, and subtracting depreciation taken for both years of \$200,000.00,” a calculation that the court acknowledged “does not reflect actual deposits into a personal checking account, but is more accurate than examining net income or profit from schedule C’s”; and
- D.J.K.’s “earning capacity is diminished on a continual basis going forward due to his injuries[,]” such that “[w]age loss will be a continuing factor in the future.”

Feldhake nonetheless claims that “the state failed to meet its burden to prove the amount of the victim’s loss and the appropriateness of the restitution award” because “[t]he only evidence offered to prove the amount of D.J.K.’s lost wages were his tax forms from 2021 and 2022,” “these forms . . . [indicate that] D.J.K. suffered net losses in 2021 and 2022,” and the evidence thus suggests that D.J.K. “did not make any income after business expenses.” But this argument ignores the district court’s decision to credit K.K.’s testimony and its assessment that D.J.K.’s testimony was corroborative, which are determinations to which we must defer. *See Alexander*, 855 N.W.2d at 344. And without explaining why the methodology the district court applied to determine D.J.K.’s lost wages was erroneous, Feldhake unpersuasively urges us to reweigh the evidence in contradiction to our general

deference to the fact-finder's broad discretion to consider the evidence in the first instance. *See Olson*, 982 N.W.2d at 495.

We therefore conclude that the district court's decision to consider D.J.K.'s \$200,000 lost-wages claim in awarding restitution was well within the court's broad discretion and is supported by the facts in the record. *See Andersen*, 871 N.W.2d at 913; *see also Miller*, 842 N.W.2d at 477.

B. Rental-Home Construction Costs

Feldhake also contends that the district court abused its discretion by granting D.J.K.'s restitution request for \$10,000 in rental-home construction costs because that claim is not supported by the evidence. We agree.²

The record fails to support the district court's decision to include D.J.K.'s claim for \$10,000 in rental-home construction costs in the restitution award. Although the state offered into evidence an invoice from M&M Construction, the amount listed in the exhibit was only \$5,300—not \$10,000—and the document did not indicate whether D.J.K. ever paid the charge. The invoice also contradicts D.J.K.'s testimony that he had “already

² The state did not include the \$10,000 payment to M&M Construction in its initial \$63,668 certificate of restitution. Instead, it appears from the record that Feldhake only learned of D.J.K.'s restitution request for the \$10,000 purportedly owed to M&M Construction when the state offered K.K.'s itemized spreadsheet into evidence at the contested restitution hearing. By failing to provide Feldhake timely notice of this additional \$10,000 restitution claim, the state did not comply with the procedure set forth in the applicable statute and deprived Feldhake of the ability to file a separate affidavit challenging the state's increased request. *See Minn. Stat. § 611A.045, subd. 3(a)*. But because Feldhake's challenge to the \$10,000 rental-home construction cost was nevertheless preserved for appeal and we agree with Feldhake that the district court abused its discretion in awarding that amount to D.J.K. in restitution, we need not reach that issue.

bought” the materials for the rental home and that he was seeking reimbursement only for the cost of labor by M&M Construction. This is because the invoice itself does not explain how much of the \$5,300 cost was attributable to labor versus materials and instead merely provides the following description for the \$5,300 cost: “Labor and Materials to repair Soffit and Fascia, Caulk house and garage”

At bottom, Feldhake convincingly argues that the state did not explain how the evidence—including D.J.K.’s testimony and the \$5,300 invoice—was sufficient to prove the \$10,000 in restitution that the district court ordered in relation to D.J.K.’s purported M&M Construction costs. Given this record, we conclude that the state failed to meet its burden and that the facts do not support the district court’s decision to include the \$10,000 amount in the restitution award. *See* Minn. Stat. § 611A.045, subd. 3(a); *see also* *Miller*, 842 N.W.2d at 477. Because of this abuse of discretion by the district court—and given the court’s failure to consider Feldhake’s ability to pay, as discussed below—we reverse the restitution order and remand for further proceedings consistent with this opinion.

II. The district court abused its discretion by failing to consider Feldhake’s ability to pay restitution.

Finally, Feldhake asserts that the district court abused its discretion by neglecting to consider her “income, resources, and obligations” before ordering her to pay \$73,668 in restitution to D.J.K. *See* Minn. Stat. § 611A.045, subd. 1(a)(2). This argument has merit.

In *Wigham*, the Minnesota Supreme Court held “that a district court fulfills its statutory duty to consider a defendant’s income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, either orally or in writing,

that it considered the defendant's ability to pay." 967 N.W.2d at 664 (footnote omitted). And "while [the supreme court did] not require that the district court make specific findings about the defendant's income, resources, and obligations to support a court's express statement that it considered the defendant's ability to pay," the supreme court did rule "that the record must include sufficient evidence about the defendant's income, resources, and obligations to allow a district court to consider the defendant's ability to pay the amount of restitution ordered." *Id.* at 665 (footnote omitted).

In reaching that conclusion, the supreme court reviewed its "decisions, and decisions by the court of appeals," for "useful examples of the type of ability-to-pay evidence that meaningfully informs a district court's decision to order restitution." *Id.* at 665–66. This evidence may include: specific, concrete evidence of a defendant's income, resources, and obligations; a PSI that includes information about the defendant's income, resources, and obligations; a defendant's express concession that they could pay the amount of restitution awarded; and the inclusion of a restitution payment schedule or structure that reflects the defendant's ability to make the periodic payments. *Id.* (citations omitted); *see also Miller*, 842 N.W.2d at 479–80 (affirming in part, but reversing and remanding for proper consideration of the defendant's ability to pay because there was no PSI and the restitution hearing did not address the defendant's ability to pay).

Here, the district court failed to fulfill its statutory duty to consider Feldhake's income, resources, and obligations in awarding and setting \$73,668 in restitution. *See Wigham*, 967 N.W.2d at 664. This is because the district court did not "expressly state[],

either orally or in writing, that it considered [Feldhake's] ability to pay.” *Id.* (footnote omitted).

We are mindful that, during prior proceedings in which the district court scheduled the contested restitution hearing, the court asked Feldhake's counsel “how much time . . . [counsel] expect[ed of the hearing] to be based on the issue of the amount of restitution versus ability to pay,” to which counsel replied that “the amount of restitution is the . . . main issue here.” And, in discussing a potential payment schedule after deciding to award the full amount of restitution that D.J.K. requested, the district court noted that such a schedule is not “really dependent on the total amount, it's dependent on ability to pay.”

Although the defense anticipated that it would primarily challenge the restitution amount, Feldhake nonetheless also challenged the state's restitution request by arguing, among other things, that she “[did] not have the ability to pay.” Thus, the “statutory duty to consider [Feldhake's] income, resources, and obligations in awarding and setting the amount of restitution” remained with the district court. *Id.* (footnote omitted). And despite its reference to Feldhake's ability to pay in discussing a potential payment schedule with the attorneys, the district court ultimately did not include such a schedule or structure that reflected Feldhake's capacity for making periodic payments. *See State v. Maidi*, 537 N.W.2d 280, 285–86 (Minn. 1995); *see also Wigham*, 867 N.W.2d at 666. We therefore conclude that the district court abused its discretion because it did not expressly state—either on the record at the contested restitution hearing or in its written order—that it considered Feldhake's ability to pay.

In sum, the district court did not abuse its discretion by considering D.J.K.'s claim for \$200,000 in lost wages to determine the restitution award because the lost-wages amount was supported by the facts in the record. But the district court abused its discretion by ordering Feldhake to pay restitution for the \$10,000 in purported rental-home construction costs because that amount lacked sufficient evidentiary support. And the district court abused its discretion by failing to expressly state that it considered Feldhake's ability to pay. We therefore reverse the restitution order and remand for further proceedings consistent with this opinion. On remand, given the amount of loss that we have determined is supported by the record, the district court is limited to deciding whether the remaining restitution award should be amended in light of Feldhake's ability to pay.

Reversed and remanded.