

SUPREME COURT OF SOUTH DAKOTA

State of South Dakota v. James Ray Hofer and Karla Kristine Hofer
d/b/a Hofer's Used Cars, LLC

State v. Hofer, 2008 SD 109 (2008) · No. No. 24718 · Decided November 12, 2008

SUMMARY

The Supreme Court of South Dakota reviewed restitution and confinement conditions imposed after James and Karla Hofer pleaded guilty to grand theft by deception arising from a used-car dealership's double-floor-plan financing scheme. The court held that the restitution award required a causal connection between the defendants' criminal activity and the bank's pecuniary loss, reversed the full award, and remanded for vehicle-specific findings. The court upheld the modification of the jail-confinement schedule as a permissible modification of probation conditions.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Konenkamp, Justice; Sabers, Justice; Zinter, Justice; Meierhenry, Justice
JURISDICTION	South Dakota
DECIDED	November 12, 2008
DOCKET	No. 24718
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Hofers appealed their criminal sentences after pleading guilty to one count of grand theft by deception. They challenged the amount of restitution ordered and the circuit court's later modification of the jail-confinement condition from two days per month for twenty-four months to forty-eight consecutive days.
STANDARD OF REVIEW	Restitution orders are generally reviewed for abuse of discretion, but legal questions concerning restitution requirements are reviewed de novo. Sentencing decisions involving incarceration receive great deference and generally are upheld when within the statutory maximum.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

James Ray Hofer, Karla Kristine Hofer d/b/a Hofer's Used Cars, LLC
v. State of South Dakota

TOPICS

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QUESTIONS PRESENTED

1. Whether the circuit court properly ordered \$294,163.36 in restitution for the Bank when the State did not establish a causal connection between the Hofers' criminal activities and the full amount of the Bank's claimed loss.
2. Whether the circuit court lawfully modified the probationary jail condition from two days per month for twenty-four months to forty-eight consecutive days.

HOLDINGS

1. The Hofers' testimony and statements constituted admissions of criminal activity concerning all vehicles covered by the indictment, including vehicles not individually listed in the count to which they pleaded guilty but stipulated to be included in the plea agreement. Restitution could therefore be awarded for losses attributable to those vehicles, subject to proof of causation.
2. Restitution is limited to pecuniary damages caused by the defendant's criminal activity. The circuit court erred by awarding the full market or floor-plan value of all unavailable vehicles without findings establishing which losses were caused by the Hofers' title falsifications and deception. The restitution award was reversed and remanded for vehicle-specific findings and conclusions.
3. The circuit court lawfully modified the manner in which the Hofers had to serve forty-eight days of jail time, changing the schedule from two days per month for twenty-four months to forty-eight consecutive days. The modification altered a probation condition, did not increase the total number of jail days, and was authorized by SDCL 23A-27-20.1.

KEY QUOTATIONS

"The emphasized 'as a result of' language requires a 'causal connection between a defendant's crime and a victim's damages.'" (§28)

"The modification was to provide an alternative method for the defendants to meet the condition of serving time in the county jail yet remain on probation and realize the benefit of the suspended imposition of sentence and suspended sentence." (§42)

FACTUAL BACKGROUND

The Hofers operated a used-car dealership financed by Farmers State Bank, which held a blanket security interest and later required separate security agreements for individual vehicles. Without the Bank's knowledge, the Hofers obtained vehicle-specific financing from Dealer Services Corporation and Automotive Finance Corporation, pledged vehicles to those lenders, and provided the Bank with copies of clear titles, creating a double-floor-plan arrangement. After the Bank discovered irregularities, the dealership closed and the Hofers filed for Chapter 7 bankruptcy. The circuit court ordered restitution based on the market or floor-plan value of vehicles listed on a spreadsheet, but the evidence did not establish that all of the Bank's losses were caused by the Hofers' criminal deception.

PROCEDURAL HISTORY

A Hutchinson County grand jury indicted the Hofers on ten counts of grand theft by deception. Under plea agreements, they pleaded guilty to Count 1 and the remaining counts were dismissed. The circuit court imposed suspended sentences and restitution of \$294,163.36, initially requiring each defendant to serve two days per month in jail for twenty-four months. After jails declined to house the Hofers because of MRSA, the court amended the confinement condition to forty-eight consecutive days. The Supreme Court affirmed the confinement modification but reversed and remanded the restitution award.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for the circuit court to make vehicle-specific findings of fact and conclusions of law determining the amount of pecuniary loss caused by the Hofers' criminal activities, consistent with the requirement of a causal connection between the criminal conduct and the Bank's damages.

CASES CITED

- State v. Martin, 2006 SD 104, 724 NW2d 872
- State v. Thayer, 2006 SD 40, 713 NW2d 608
- City of Deadwood v. Summit, Inc., 2000 SD 29, 607 NW2d 22
- State v. Garber, 2004 SD 2, 674 NW2d 320
- State v. Milk, 2000 SD 28, 607 NW2d 14
- State v. Gehrke, 491 NW2d 421 (SD 1992)
- State v. Stahl, 2000 SD 154, 619 NW2d 870
- State v. Willson, 2005 SD 90, 702 NW2d 828
- State v. Joyce, 2004 SD 73, 681 NW2d 468
- State v. Davis, 458 NW2d 812 (SD 1990)
- State v. Munk, 453 NW2d 124 (SD 1990)
- State v. Tuttle, 460 NW2d 157 (SD 1990)
- State v. Ford, 328 NW2d 263 (SD 1982)

- State v. Hughes, 62 SD 579, 255 NW 800 (1934)
- State v. Jackson, 272 NW2d 102 (SD 1978)
- Ex parte Watt, 73 SD 436, 44 NW2d 119 (1950)

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