

**STATE OF MAINE  
KENNEBEC, SS.**

**SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT  
DOCKET NO. KEN-15-534**

**STATE OF MAINE**

**Appellee**

**v.**

**CHRISTOPHER KNIGHT**

**Appellant**

**On Appeal from the Superior Court**

**BRIEF OF APPELLANT**

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## STATEMENT OF FACTS

### Procedural Background

On August 22, 2013 Appellant Christopher Knight ("Knight") was indicted in Kennebec County Superior Court. Docket Entries, Appendix ("App.") at 2; Indictment, App. at 11. Knight was indicted for the burglary of the "dwelling place of Lillie Cogswell" as well as the theft of "food/and/or clothing, property of Lillie Cogswell." Indictment, App. at 11.

On October 28, 2013 Knight pled guilty to the charges in the indictment. Docket Entries, App. at 3-4. Knight was accepted into the Co-Occurring Disorders Court and his sentencing was deferred. Docket Entries, App. at 4.

On March 23, 2015, after successful completion of the Co-Occurring Disorders Court program, Knight was sentenced. Docket Entries, App. at 4. At that time the Superior Court sentenced Knight and included as part of the sentencing restitution requested by the State of an additional \$1125.00 for the cost of repair to land that was damaged not by Knight but by the State Police. Sentencing Transcript ("Sent. Tr.") at 6, 14-15, App. at 4-5.

Knight filed a Motion to Correct Sentence, noting that he had not caused any of the damage that the State sought restitution for, and restitution for damage caused by the State Police in connection with accessing a place where Knight had been camping, was not authorized under the restitution statutes, 17-A M.R.S. §§1322, 1325. Motion to Correct Sentence, App. at 9. The State objected to the Motion, Knight replied, and the matter was set for a hearing. Docket Entries, App. at 6.

A hearing on the Motion was held on July 20, 2015. Docket Entries, App. at 7; Transcript of Hearing on Motion to Correct Sentence, App. at 18. The Superior Court entered an Order on Motion to Correct Sentence on October 1, 2015 denying the Motion to Correct

Sentence and ordering Knight to pay restitution of \$1125.00. Docket Entries, App. at 7. Order on Motion to Correct Sentence, App. at 10. This appeal followed.

### Factual Background

Details concerning the State's request for an additional \$1125.00 in restitution developed over the course of the sentencing hearing and the hearing on the Motion to Correct Sentence. There was limited detail. The State noted at the sentencing hearing that "[t]he State Police has asked me to request an additional \$1125.00, which is the cost of the repair to the land that they incurred." Sent. Tr. at 6. The State noted that there was a bill and it was "for the private drive road repair and .7 miles of grading and road repair and rolled [sic], and also for labor." Sent. Tr. at 10; Bill, App. at 15. This was not paid for by "the people who live on the road" but rather by "the State Police." Sent. Tr. at 11.

It was not until the hearing on the Motion to Correct Sentence that the true nature of the restitution that was being requested was nailed down. In response to the Superior Court's inquiry, the State acknowledged that the Maine State Police had built a road over Lisa Fitzpatrick's property and Ms. Fitzpatrick was not a victim of any crime by Knight. Transcript of Hearing on Motion to Correct Sentence ("Mot. Tr.") at 7. The road was built for the police to get to Knight's campsite. Id. While at the campsite the State Police "collected items for evidence purposes." Mot Tr. at 8. The property where Knight was living was not owned by any of the victims. Mot. Tr. at 12. The State acknowledged at the hearing that "[w]e don't have great guidance from the statute here and so I'll certainly agree that this is a difficult call." Id.

In the Superior Court's Order on Motion to Correct Sentence the Court found that:

The Maine State Police constructed a road in order to reach the campsite where Defendant resided for years. The police collected evidence of Defendant's crimes, which he brought to and kept at the campsite. Police then cleaned and

restored the area to its condition prior to Defendant's residing there. Finally the police removed the access road.

Order on Motion to Correct Sentence, App. at 9.

The Superior Court then determined that the Maine State Police could be considered a "victim" and that the construction of the road, over the property of a non-victim to access the property of a non-victim, was considered an "environmental cleanup expense" allowing restitution to be assessed. Order on Motion to Correct Sentence, App. at 10.

**Statement of Issue**

Whether the Superior Court erred in assessing restitution against Knight for the State Police construction of a road over the property of a non-victim of Knight's offenses, to access property of a non-victim where Knight was camping, for the purposes of taking down the campsite.

### Summary of Argument

Knight should never have been assessed restitution for the State Police building an access road to go to the campsite he had been living in for years to take down the campsite. Restitution is only allowed for true "economic loss." The alleged "victim" is not anyone involved in Knight's offenses but was the State Police and the creation of a road or repair was unrelated to Knight's burglary and theft conviction. The Superior Court specifically noted that the order of restitution was based on 17-A M.R.S. §1322(3)(C-1) as an "environmental clean-up expense" but that provision makes clear that those expenses are for "products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals; to restore the environment to its previous condition prior to any harm or damage; and to properly dispose of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of Chapter 45." None of the alleged costs here for the creation of a road in the woods falls under that definition. Restitution never should have been ordered.

### Argument

17-A M.R.S. §1325 allows for an order of restitution “for economic loss” which includes the cost of “environmental clean-up expense” which is limited to

...[a]ny reasonable expense incurred for products and services needed to clean up any harm or damage caused to the environment, including any harm or damage caused by chemicals; to restore the environment to its previous condition prior to any harm or damage; and to properly dispose of chemicals and other materials, including those used in the manufacture of scheduled drugs in violation of Chapter 45.

17-A M.R.S. §1322(3)(C-1).

There must be proof that a defendant’s crime actually caused the damages for restitution to be ordered. State v. McDonough, 2009 ME 39, ¶6. “A court is not free to impose restitution that is not plainly allowed by the restitution statute.” State v. Kotredes, 2003 ME 142, ¶23. Restitution must only be for economic loss actually “caused to a victim by the crime for which a defendant is convicted.” State v. Beaudoin, 503 A.2d 1289, 1290 (Me. 1986); State v. McCray, 1999 ME 151, ¶¶4-6.

In the case before the Court the State Police’s construction of a road to access a place where Knight was camping cannot be considered an “environmental clean-up expense” under any stretch of that term. The Superior Court used the example of “the owner of a building in which a defendant operates a methamphetamine lab” as someone who “would not be delegated the responsibility of cleaning the resulting environmental damage.” Order on Motion to Correct Sentence, App. at 10. There was no such hazardous chemical or environmental hazard involved in Knight’s case at all. No evidence was presented that the State Police were cleaning up some sort of a toxic site or engaged in anything other than taking down Knight’s campsite on the property of a person who was not considered a victim, either of any of Knight’s offenses or as

§1322 defines a victim. The road was constructed over an area that was owned by someone who was also not considered a victim of any of Knight's offenses nor as a "victim" as defined by §1322.

The State correctly noted at the original sentencing that this was a "close call" but the reality is that this is not a close call at all because restitution can only be ordered under specific, defined circumstances and the State Police's entry to Knight's campsite did not involve any expenses "for products and services needed to clean up any harm or damage caused to the environment" nor were there any damages "caused by chemicals" nor damages caused to "the environment" such that the State Police needed to "restore the environment to its previous condition prior to any harm or damage." The fact that the expenses were not even incurred for work at the actual campsite separates the \$1125.00 road repair that much more from Knight's offenses and conduct.

If the State is allowed to claim restitution as it has requested in this case then every time law enforcement clears a homeless person's tent from some abandoned area the person whose meager shelter is taken away can be charged with the "environmental clean-up" expense in doing so. The State could also make that person pay for the gas the police used to get to the campsite and all expenses connected to the non-environmental "clean-up." This would be grossly unfair and absurd.

This Court has made clear that "the criminal action committed by the defendant must have caused the damages claimed by the victim of that crime." McDonough, 2000 ME 39 at ¶5. (emphasis added). The fact that the State Police went to Knight's campsite in connection with its work investigating Knight's offenses is insufficient to support a determination that Knight's offenses in fact were a "cause" of the damages. See McDonough, 2009 ME at ¶6. In the absence

of a nexus between Knight's actual offenses for which he was convicted, and the State Police's building of a road to a place where Knight was living, restitution can simply not be ordered. McDonough, 2009 ME at 7.

This Court should not endorse the Superior Court's placing the square peg of the alleged damage here into the round hole of the restitution statute allowing for restitution for "environmental clean-up expense." To allow the expenses here to be considered "environmental clean-up expenses" would be construing the restitution statute in a way that would reach "an absurd, illogical or inconsistent result" which is especially prohibited given the strict construction to be applied in this criminal case. State v. Chittim, 2001 ME 125, ¶6; State v. Millett, 392 A.2d 521, 525; State v. Tarmey, 2000 ME 23, ¶9; State v. Reagan, 1998 ME 188 ¶¶7-8. "Environmental clean-up expense" should be limited to that which is truly caused by damage to the environment and not the efforts by the State Police to take down a campsite. This is especially the case when the actual taking down of the campsite is not even the expense at issue but rather the twice-removed expense of the construction of a road to get access to Knight's campsite on the property of a non-"victim" over the property of a non-"victim."

#### Conclusion

Wherefore, for the foregoing reasons, Appellant Christopher Knight respectfully requests this Court enter an order vacating the order of restitution of \$1125.00.

Date: 2/16/16



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CERTIFICATE OF SERVICE

I, Walter F. McKee, Esq., hereby certify that two copies of the foregoing Appellant's Brief have been mailed this date, postage prepaid, to:

Maeghan Maloney, Esq.  
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Dated: 2/16/12



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