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State of Franklin v. Clegane

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State of Franklin v. Clegane

FILE

Memorandum to Examinee 1

Guidelines for persuasive briefs.....2

Newspaper article from *The Franklin City Post*3

Excerpt from transcript of client interview4

Defendant’s motion to exclude victim statements and deny restitution6

LIBRARY

Excerpts from the Franklin Crime Victims’ Rights Act9

State v. Jones, Franklin Court of Appeal (2006) 11

State v. Berg, Franklin Court of Appeal (2012)13

State v. Humphrey, Franklin Court of Appeal (2008)15

FILE

Selmer & Pierce LLP
Attorneys at Law
412 Valmont Place
Franklin City, Franklin 33703

MEMORANDUM

To: Examinee
From: Anna Pierce
Date: February 27, 2018
Re: State of Franklin v. Clegane

We represent Sarah Karth. Sarah Karth's sister, Valerie Karth, was physically injured and incapacitated last summer when an unsupervised teenager set off fireworks at a neighborhood Fourth of July party. The teenager, a minor, was also injured. Valerie Karth was struck by the fireworks and also suffered economic injury because sparks from the fireworks started a fire that burned her garage to the ground.

The man who sold the fireworks to the teenager, Greg Clegane, was convicted of the felony of unlawful sale of fireworks to a minor. Clegane's sentencing hearing is in two weeks. Sarah Karth wishes to read victim-impact statements at the sentencing hearing both on her own behalf and on Valerie's behalf. She has also submitted a request that Clegane pay restitution for the losses she and her sister have sustained because of his actions.

Last week the prosecution notified Sarah that Clegane's counsel has filed a motion to (1) exclude the proposed victim-impact statements at the sentencing hearing, arguing that Sarah and Valerie are not victims within the meaning of the Franklin Crime Victims' Rights Act (FCVRA); and (2) deny their restitution requests. A copy of Clegane's motion is attached.

I intend to file a brief in opposition to this motion on behalf of Sarah asking that the court include Sarah's and Valerie's victim-impact statements and order Clegane to pay restitution to both of them. Please draft the argument section of our brief. In drafting your argument, be sure to follow the attached guidelines. Make the most persuasive argument possible under the FCVRA and relevant case law.

Selmer & Pierce LLP

OFFICE MEMORANDUM

To: Associates
From: Managing Partner
Date: July 8, 2012
Re: Guidelines for Persuasive Briefs in Trial Courts

The following guidelines apply to persuasive briefs filed in support of motions in trial courts.

I. Captions

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

Your legal argument should make your points clearly and succinctly, citing relevant authority for each legal proposition. Do not restate the facts as a whole at the beginning of your legal argument. Instead, integrate the facts into your legal argument in a way that makes the strongest case for our client.

Use headings to separate the sections of your argument. Your headings should not state abstract conclusions, but rather integrate factual detail into legal propositions to make them more persuasive. An ineffective heading states only: "The court should not admit evidence of the victim's character." An effective heading states: "The court should refuse to admit evidence of the defendant's character for violence because the defendant has not raised a claim of self-defense."

In the body of your argument, analyze applicable legal authority and persuasively argue how both the facts and the law support our client's position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished.

Finally, anticipate and accommodate any weaknesses in your case in the body of your argument. If possible, structure your argument in such a way as to highlight your argument's strengths and minimize its weaknesses. Make concessions if necessary, but only on points that do not involve essential elements of your claim or defense.

The Franklin City Post

Illegal Fireworks Injure Two and Destroy Garage

July 5, 2017

FRANKLIN CITY, Franklin—The quiet neighborhood of Fair Oaks became a nightmare of exploding shells after a 17-year-old set off illegal, professional-grade fireworks during a Fourth of July celebration in a friend's backyard. The fireworks, called Little Devil Shards, sent exploding shells spraying through the yard, striking and injuring a bystander and setting a nearby garage on fire. The minor was also seriously injured.

The minor set off the fireworks to surprise his friends, Franklin City Detective Ralph Guerra said early this morning. It appears that the minor obtained the fireworks the day before the party from Greg Clegane, the proprietor of Starburst Fireworks, which sells fireworks and other party supplies from a storefront in the Third Ward of Franklin City. Clegane has three similar retail operations spread throughout the eastern part of the state. The sale of such powerful fireworks to a minor is a felony in Franklin, punishable by up to five years in prison and a \$50,000 fine. The minor's name has not been released. He is a Franklin City resident.

Lena Harley, a local resident, saw the minor igniting the fireworks in the middle of a crowd of guests at the party. She watched as a spray of sparks and exploding shells flew through the air. "It was like a war zone," said Harley.

The victims were transported to an area hospital. Several shells also struck a neighbor's garage, setting it afire. The garage was totally destroyed before firefighters could control the blaze.

Franklin City police are encouraging anyone with information about the incident to contact them.

(Franklin City Associated Press contributed to this report.)

Excerpt from Transcript of Client Interview with Sarah Karth
February 26, 2018

Att’y Pierce: Good afternoon, Ms. Karth.

Sarah Karth: Good afternoon.

Pierce: Can you describe what brings you to the office today?

Karth: Yes. Are you familiar with the fireworks incident over in Fair Oaks last summer?

Pierce: I remember hearing about it on the news right after it happened.

Karth: My sister, Valerie Karth, was one of the people injured that day. Her house is next door to the yard where the fireworks went off, and she was attending the party. Sparks from the fireworks caused her garage to burn down.

I was at the criminal trial of Greg Clegane, who was convicted of the felony of selling dangerous fireworks to a minor. During the trial, the arresting officer testified that Clegane admitted selling the fireworks and that the boy had told him, “I can’t wait to show these to my friends—I’m going to give everyone a big surprise.” Clegane told the officer that the minor “looked like he was at least in his twenties” and that the boy’s statements “didn’t raise any red flags.”

I want to read victim-impact statements at Clegane’s sentencing hearing, one on my own behalf and one on my sister Valerie’s. I also want restitution on behalf of both Valerie and myself. Last week, I heard from the prosecutor’s office that Clegane’s lawyer had filed a motion asking the court to keep me from making the statements and seeking restitution.

Pierce: What do you want to say? What are you asking for?

Karth: I want to make it clear to the judge, and to Clegane, that his illegal sale of dangerous fireworks to a 17-year-old had very personal and life-altering consequences for me and my family.

Pierce: Tell me more.

Karth: Clegane needs to understand that his actions have irrevocably affected our lives and that I am also a victim of his crime. I want to look him in the eyes and tell him that. I want the court to understand how Clegane’s actions have ruined my sister’s life. Valerie was attending the party when the fireworks went off. She was hit by fireworks and was rushed to the hospital for emergency care. Valerie was seriously

injured and was in a coma for several months. She has just come out of the coma and is still incapacitated. She remains in stable condition in the hospital but cannot come to court.

Pierce: What else do you want to tell the court about Valerie?

Karth: Valerie has always loved life and lived it to the fullest. She is bright, athletic, independent, and strong. She was the first person in our family to graduate from college. She is a rock. She is someone whom you can count on and trust. My father died five years ago, and my mother has been so traumatized by Valerie's injuries that she is too frail to participate in any court proceedings.

Pierce: And what about restitution for Valerie?

Karth: Valerie's out-of-pocket medical expenses so far total \$22,000—we've got the bills and receipts to prove it. Her medical providers have concluded that she will incur at least an additional \$40,000 in out-of-pocket medical expenses. By the time she is able to return to work, she will have lost \$120,000 in salary. The fireworks also destroyed her garage; rebuilding it has cost \$17,000.

Pierce: And you want to make a victim-impact statement on your own behalf?

Karth: Yes, I truly believe that I am also a victim of Clegane's crime. Valerie and I are very close and always have been. I'm 35 and she is two years older. The day she was injured was the worst and most shocking day of my life. I spent endless days in the hospital waiting for her to come out of the coma. If not for Clegane, that teenager could not have caused me the trauma that he did. I want the court to give Clegane the maximum sentence possible—five years—so that he knows how many people his actions have harmed and will be held accountable. People think that fireworks are no big deal, but this reckless sale of fireworks has really devastated my family.

Pierce: And are you requesting restitution on your own behalf?

Karth: Yes, I have incurred \$1,500 in out-of-pocket medical bills myself as a result of Clegane's criminal behavior. I've been so depressed and distraught about Valerie's future and how she will be taken care of that I've been seeing a therapist twice a month for the past six months. My insurance has a high deductible, so I've had to bear the cost of the therapist myself. I think Clegane should pay that cost, not me. We've suffered enough.

**STATE OF FRANKLIN
DISTRICT COURT OF GLENN COUNTY**

STATE of FRANKLIN,

Plaintiff,

v.

GREG CLEGANE,

Defendant.

Case No. 2017-CR-238

**DEFENDANT’S MOTION TO EXCLUDE VICTIM STATEMENTS
AND DENY RESTITUTION**

Defendant Greg Clegane hereby moves the Court to deny the request of Sarah Karth (acting on behalf of Valerie Karth and in her own capacity) to make victim-impact statements at Defendant’s sentencing hearing in this case. In addition, Defendant requests that the Court deny the Karths’ requests for restitution. In support of this motion, Defendant states:

1. After a jury trial on February 2, 2018, Defendant was convicted of the felony crime of unlawful sale of fireworks to a minor, Franklin Criminal Code § 305. Sentencing is scheduled for March 14, 2018.

2. Pursuant to the Franklin Crime Victims’ Rights Act (FCVRA) §§ 55 and 56, Ms. Karth has submitted proposed victim-impact statements regarding injuries she and Valerie Karth suffered as a result of fireworks that were set off at a party in Franklin City on July 4, 2017.

3. It is undisputed that Defendant was not present on that occasion and had no part in the decision to ignite fireworks in an unsafe manner.

4. The fireworks were ignited by a 17-year-old male, who was using them contrary to the instructions on the fireworks’ packaging.

5. At the time Defendant sold said fireworks, he had no reason to believe that the 17-year-old was not an adult, or that the fireworks would be ignited under unsafe conditions.

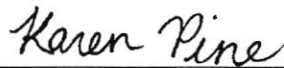
6. Defendant’s only connection to the injuries suffered by the Karths is that the minor who set off the fireworks had bought them from Defendant. The Karths do not qualify as crime victims under the FCVRA because they were not “directly and proximately harmed as a result of

the commission” of the offense of which Defendant stands convicted: the sale of fireworks to a minor. FR. CRM. CODE § 305.

7. In addition, because the Karths cannot be deemed crime victims under FCVRA § 55(b), the Court must deny their restitution requests. *See* FCVRA § 56.

8. Even assuming that the Karths could be considered crime victims under the statute, the restitution they seek is not supported by the evidence and is excessive, and Defendant does not have the resources to pay the amounts requested. FCVRA § 56(d).

WHEREFORE Defendant asks the Court to deny the victim-impact statements and restitution requests made by the Karths and to grant such other relief as the Court deems just and proper.



Filed: February 19, 2018

Karen Pine
LAW OFFICES OF PINE, BRYCE & DIAL, LLP
Attorney for Defendant Greg Clegane

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Excerpts from the Franklin Crime Victims' Rights Act

§ 55. Rights of Crime Victims

(a) A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime, or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, or sentencing, or at any parole proceeding.
- (5) The reasonable right to confer with the prosecution in the case.
- (6) The right to full and timely restitution under section 56 of this Act.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

(b) Definitions—Crime Victim

- (1) In general—As used in this Act, the term “crime victim” means a person directly and proximately harmed as a result of the commission of a Franklin criminal offense.
- (2) Minors and certain other victims—In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court may assume the crime victim's rights under this Act, but in no event shall the defendant be named as such guardian or representative.

§ 56. Restitution

- (a) The court, when sentencing a defendant convicted of an offense, shall order that the defendant make restitution to any victim of such offense.
- (b) The order may require that such defendant
- (1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense,
 - (A) return the property to its owner or someone designated by the owner; or
 - (B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the repair or replacement cost of the property.
 - (2) in the case of an offense resulting in physical, psychiatric, or psychological injury to a victim,
 - (A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment;
 - (B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and
 - (C) reimburse the victim for income lost by such victim as a result of such offense.
- (c) A defendant is presumed to have the ability to pay restitution unless the defendant establishes the inability to pay by a preponderance of the evidence.
- (d) In determining the amount of restitution, the court shall consider (1) public policy that favors requiring criminals to compensate for damage and injury to their victims; (2) the financial burden placed on the victim and those who provide services to the victim as a result of the criminal conduct of the defendant; and (3) the financial resources of the defendant and the nature of the burden the payment of restitution will impose on dependents of the defendant.

State v. Jones
Franklin Court of Appeal (2006)

The issue in this appeal is whether the trial court erred when it held that the girlfriend of the defendant's cocaine customer was not a "victim" entitled to provide a victim-impact statement at sentencing pursuant to the Franklin Crime Victims' Rights Act (FCVRA). We affirm.

For approximately two years between 2004 and 2006, defendant Iggy Jones was engaged in a conspiracy with others to manufacture and distribute cocaine. Based on information conveyed to an undercover law enforcement officer, the police executed a search warrant of the defendant's home, discovering the remnants of a cocaine manufacturing operation and related paraphernalia. Jones was arrested and subsequently pled guilty to conspiracy to possess cocaine with intent to distribute in violation of the Franklin Criminal Code.

After Jones pled guilty, Gina Nocona, the former girlfriend of one of the defendant's regular cocaine customers, filed a motion claiming that she was a "victim" under the FCVRA and therefore entitled to make a victim-impact statement at Jones's sentencing hearing. She claimed that her former boyfriend, a cocaine user who regularly bought drugs from Jones, "physically, mentally, and emotionally abused" her and that her former boyfriend's "poor judgment was in large part attributable to the drugs Jones had illegally sold him." Nocona asserted that her boyfriend's behavior typically became abusive only when he was under the influence of cocaine. The trial court denied Nocona's motion, ruling that Nocona did not have standing as a "victim" under the FCVRA. Nocona appealed.

Often crime victims do not feel that their voices are heard or that their concerns are properly considered in the judicial process. The Franklin legislature attempted to address these concerns when it passed the FCVRA in 2004. Among the rights this statute specifically gives victims is the right to "be reasonably heard at any public proceeding in the district court involving . . . sentencing." FCVRA § 55(a)(4). Only a "crime victim" is afforded these rights. The FCVRA defines "crime victim" as "a person directly and proximately harmed as a result of the commission of a Franklin criminal offense." *Id.* § 55(b)(1).

In applying this definition, Franklin courts have held that a purported "crime victim" under the FCVRA must demonstrate (1) that the defendant's conduct was a cause in fact of the victim's injuries and (2) that the purported victim was proximately harmed by that conduct.

In *State v. Hackett* (Fr. Ct. App. 2003), the Franklin Court of Appeal interpreted “cause in fact” and affirmed the trial court’s order that defendant George Hackett, who pled guilty to aiding and abetting methamphetamine manufacture, pay restitution to an insurance company for property damage. The damage had been caused when one of Hackett’s codefendants started a fire by placing a jar of chemicals used to manufacture methamphetamine on a hot plate. The court found that Hackett had procured the supplies his codefendants used to manufacture methamphetamine, and that he had “knowledge and understanding of the scope and structure of the enterprise and of the activities of his codefendants.” The court held that even though there were “multiple links in the causal chain,” Hackett’s conduct was a cause in fact of the resulting property damage.

In the current case, the facts do not support the same conclusion. Nocona asserts that her former boyfriend was abusive only when he was under the influence of cocaine. If true, such a statement might meet the cause-in-fact prong of the standard, although the court acknowledges that the contention raises complex questions relating to the causes of domestic violence. Nocona offered no expert testimony to support her assertion regarding causation.

Nocona’s motion also fails the second prong of the definition of a crime victim under the FCVRA, which requires that this court determine whether the defendant’s criminal act proximately harmed Nocona. The concept of foreseeability is at the heart of “proximate harm.” The closer the relationship between the actions of the defendant and the harm sustained, the more likely that a court will find that proximate harm exists. *See State v. Thomas* (Fr. Ct. App. 2002).

Nocona is unable to demonstrate that her alleged injuries were a foreseeable consequence of the defendant’s drug conspiracy. She has not provided the court with evidence that the drug conspiracy led to her injuries or that the defendant knew about the impact of the drugs on Nocona’s former boyfriend. Moreover, while we deplore the many undesirable social effects of drug trafficking, we do not think that the asserted abusive conduct of Nocona’s boyfriend toward Nocona falls within the range of reasonably foreseeable harms resulting from the defendant’s conspiracy. Nocona is not a “victim” under the FCVRA because she is not a person “directly and proximately harmed” by the criminal act committed by the defendant.

Affirmed.

State v. Berg
Franklin Court of Appeal (2012)

The defendant, Leon Berg, contends that the trial court violated his constitutional rights and the Franklin Crime Victims' Rights Act (FCVRA) in allowing the parents of Carly Appleton to make victim-impact statements at his sentencing hearing. We find that the trial court did not err, and affirm.

The defendant's girlfriend, Sheila Greene, was driving herself and Berg back from Franklin Beach to Franklin State College (FSC) in Berg's car. They offered a ride to Carly Appleton, another FSC student. Greene and Appleton were 19 years old; Berg was 22. The drinking age in Franklin is 21. They stopped at a gas station, where Berg bought a quart of vodka and a six-pack of beer. Berg and Greene drank some of the vodka and then got back into the car. Appleton did not drink anything. Berg knew that Greene had been previously arrested and fined for driving under the influence, but he allowed her to drive anyway. In fact, Berg admitted that he handed Greene a beer while she was driving. Not long after, Greene, driving considerably over the speed limit, crashed the car into a tree. Berg sustained minor injuries; Greene was killed instantly; Appleton died at the hospital four hours later. Greene's postmortem blood alcohol level was well over the legal limit for operating a motor vehicle in Franklin.

Berg pleaded guilty to the felony crime of providing alcohol to a minor resulting in death. Berg was sentenced to six months in prison followed by two years of extended supervision. Appleton's parents each petitioned the court to make victim-impact statements at Berg's sentencing hearing as representatives of their daughter, who they claimed was a victim of the defendant's offense.

We begin with an analysis of who constitutes a "victim" within the meaning of the FCVRA, which defines a "victim" as one who has been "directly and proximately harmed" by a Franklin criminal offense. § 55(b)(1). The FCVRA provides a victim with the right to "be reasonably heard at any public proceeding in the district court involving . . . sentencing." § 55(a)(4). The legislative history of the statute indicates that the term "crime victim" should be interpreted "broadly." (Citation omitted.)

Carly Appleton's life was tragically cut short as a result of the drunk driving and the car crash that occurred. It seems obvious to this court that the defendant's actions caused Greene's intoxication, which affected her ability to handle the car in the conditions leading to the crash.

But for the defendant's buying alcohol and furnishing it to Greene, the Appletons' daughter would still be alive. Thus, there is a direct causal connection between Berg's conduct and Appleton's death. This satisfies the condition that the defendant's action be a cause in fact of the person's injury. *See State v. Jones* (Fr. Ct. App. 2006).

This court must also decide whether Berg's crime proximately harmed Carly Appleton for purposes of the FCVRA. The concept of "proximate harm" is a limitation that courts place upon an actor's responsibility for the consequences of the actor's conduct; it is a means by which courts limit the scope of the actor's liability. The concept reflects ideas of what justice demands or what a court finds administratively possible and convenient. Foreseeability is at the heart of determining if an actor's conduct proximately harmed a victim. *See Jones*. In determining whether the harm was foreseeable, the court looks to whether the resulting harm was within the zone of risks resulting from the defendant's conduct for which the defendant should be found liable.

We conclude that, on these facts, it was reasonably foreseeable to Berg that if he bought alcohol and distributed it to his girlfriend, who he was aware had a history of driving drunk, then his girlfriend might drive drunk, and that her drunk driving might lead to a car crash. There is a natural and continuous sequence of events without which Appleton's death would not have occurred. In other words, there is an intuitive relationship between Berg's conduct and the resulting harm. Berg could reasonably have foreseen that he, Greene, or Carly Appleton could be seriously injured or killed as a result of Greene's drunk driving. Thus, the harm to Appleton that resulted was within the risk of Berg's actions. The loss suffered by Appleton clearly falls within the scope of Berg's conduct. Accordingly, we find that Carly Appleton was a crime victim under the FCVRA.

The trial court correctly allowed Appleton's parents to make victim-impact statements at the defendant's sentencing hearing, as they were the approved representatives of their daughter, *see* § 55(b)(2), who the trial court found was a "crime victim" under the FCVRA.

Affirmed.

State v. Humphrey
Franklin Court of Appeal (2008)

Two issues are raised in this appeal: (1) whether the trial court erred in finding that a mother, acting as the representative for her two sons, whose father had been killed, was qualified to seek restitution on behalf of her sons under the Franklin Crime Victims' Rights Act (FCVRA); and (2) whether the court erred in ordering the defendant to pay restitution under FCVRA § 56. The trial court held that the mother was an appropriate representative for the sons, who were "victims" entitled to restitution from the defendant for the loss of child-support income. We affirm with respect to the first issue and remand for further proceedings on the second.

On April 12, 2006, defendant Ted Humphrey was driving home from a party. He was texting while driving and lost control of his car. The car then skidded into the adjacent bicycle lane and hit Connor Benton, who was riding his bike home from work. Although Humphrey was able to stop his car and call 911, the first responders were unable to revive Benton, who had suffered a traumatic head injury. Humphrey was unharmed.

Humphrey was charged with one count of involuntary manslaughter, to which he pled guilty on October 30, 2006. Connor Benton's ex-wife, Kate Gove, sought restitution from Humphrey for the loss of child-support income on behalf of her two minor sons, then ages 6 and 10. Gove appeared at the defendant's sentencing hearing and testified that Connor Benton had provided critical financial support to her family before his death. The court sentenced Humphrey to 18 months in prison and ordered restitution for the lost child support provided by Connor Benton, citing the FCVRA. The defendant appeals from that decision.

One purpose of the FCVRA is to force offenders to pay full restitution to the identifiable victims of their crimes. The act applies to any "crime victim" and defines that term as "a person directly and proximately harmed as a result of the commission of a Franklin criminal offense." FCVRA § 55(b)(1). The act goes on to provide that "[i]n the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court may assume the crime victim's rights" *Id.* § 55(b)(2). It is undisputed that Gove, as the mother of Benton's minor children, is their appropriate representative under the Act.

We find that Benton's two young sons are "crime victims" in part because of the loss of financial support from their father. The FCVRA requires only that a person be "directly and proximately harmed" by an offense. The term "harm" embraces physical, financial, and psychological damage. *See* FCVRA § 56(b)(2).

We now turn to whether the court properly ordered the defendant to pay restitution in the amount of \$15,200. Section 56(c) of the FCVRA creates a rebuttable presumption that the defendant is financially capable of paying restitution and places the burden of rebutting the presumption on the defendant.

The defendant did not present any evidence to establish that he was incapable of paying restitution. Apparently relying on § 56, the court ordered \$15,200 in restitution for the value of lost child support without any inquiry into the defendant's financial situation and without any findings to justify the restitution order. On appeal, the defendant argues that the restitution statute requires the court to make express findings justifying a restitution order. The defendant's reading of the statute is correct. Section 56(d) identifies three factors that the court must take into account in determining the amount of restitution: (1) public policy that favors requiring criminals to compensate for damage and injury to their victims; (2) the financial burden placed on the victim and those who provide services to the victim as a result of the criminal conduct of the defendant; and (3) the financial resources of the defendant.

Before imposing restitution, the sentencing judge must make a "serious inquiry" into all three factors. *See State v. Schmidt* (Fr. Sup. Ct. 2003). While the statute places the burden of proof on the defendant to show inability to pay, the court should inquire into the additional factors. This case will be remanded with instructions to the trial court to conduct that inquiry.

Affirmed in part and remanded for further findings consistent with this opinion.