

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0385-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSHUA ADAM YOUNG,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008152192001SE

Honorable Margaret Benny, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

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V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Joshua Young was convicted of aggravated driving under the influence of an intoxicant, and the trial court imposed a four-month prison term to be followed by seven years of probation. The court also ordered Young to pay \$22,939.42 in restitution. Young filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., challenging the amount of restitution ordered. The court summarily dismissed the petition, and this petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 In August 2008, Young collided with two vehicles while he was driving under the influence of an intoxicant, and then left the scene of the accident. As part of the plea agreement, he stipulated to pay restitution not to exceed \$75,000. Police officers documented damages on the rear portion of the victim, S.’s, vehicle, which are the subject of this petition. S. testified at the restitution hearing that after the police completed the accident report, they told him he was “free to go,” and he proceeded to drive home. Although he observed no fluids or liquids beneath the car, he heard a noise “like the tire was rubbing,” causing him to pull over several times to check the car. S. was driving under the speed limit with his emergency lights engaged when another driver alerted him that one of his tires was “on fire.” S. then stopped and got himself and his daughter out of the car before it became “engulfed in flames” and “totally burn[ed] up.”

¶3 We view the facts in the light most favorable to upholding the restitution award. *State v. Lewis*, 222 Ariz. 321, ¶ 15, 214 P.3d 409, 414 (App. 2009). At the

restitution hearing, S.'s insurance representative testified that S. had paid \$500 toward his deductible and his insurance company had paid \$22,439.42 for the total loss of his car and \$600 for his bodily injury claim. The state argued Young was responsible for all economic losses S. had suffered, including the total loss of his vehicle resulting from the fire. Conceding he was responsible for the initial damages to the rear portion of S.'s vehicle, Young argued he was not responsible for the "loss that resulted from the concurrence of some other causal event other than [his] criminal conduct," to wit, the fire resulting from S.'s having driven the car away from the scene of the accident. The trial court characterized S.'s damages as economic losses "directly caused by the offense" and awarded \$22,939.42 in restitution—\$500 payable directly to S. and \$22,439.42 to his insurance company.

¶4 Young argues on review, as he did below, that "[S.'s] acts constituted an additional, intervening event that caused the total loss [of S.'s vehicle]," and that "[S.'s] intervening acts were the necessary precursor to the total—but avoidable—loss of the [vehicle] to fire." He thus contends the trial court erred by ordering him to pay restitution for the damages beyond those caused by the initial collision. He asks that we vacate the restitution order and remand for a new restitution hearing.¹ We review an award of restitution for an abuse of discretion. *State v. Slover*, 220 Ariz. 239, ¶ 4, 204 P.3d 1088, 1091 (App. 2009).

¹Young acknowledged in his petition for post-conviction relief that "the extent of the damages caused solely by the initial collision was not quantified during the restitution hearing."

¶5 Section 13-603(C), A.R.S., provides “the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court.” *See State v. Guilliams*, 208 Ariz. 48, ¶¶ 18-19, 90 P.3d 785, 790-91 (App. 2004) (causation determination case-specific in restitution context). The state has the burden of establishing a restitution claim by a preponderance of the evidence. *In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003). The amount of restitution awarded is within the discretion of the trial court, “but some evidence must be presented that the amount bears a reasonable relationship to the victim’s loss before restitution can be imposed.” *State v. Scroggins*, 168 Ariz. 8, 9, 810 P.2d 631, 632 (App. 1991). To be recoverable as restitution, “(1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss.” *State v. Madrid*, 207 Ariz. 296, ¶ 5, 85 P.3d 1054, 1056 (App. 2004). A victim is not entitled to receive restitution for consequential damages, but only for direct economic loss from the offense. *See* A.R.S. § 13-105(16) (“Economic loss does not include . . . consequential damages.”). When a loss results from the occurrence of some event other than the defendant’s criminal conduct, the loss is indirect and consequential, and therefore does not qualify for restitution. *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002) (court should order restitution for “damages that flow directly from the defendant’s criminal conduct, without the intervention of additional causative factors”).

¶6 In its minute entry ruling dismissing Young’s petition for post-conviction relief, the trial court correctly concluded that “[t]he fire and loss to [S.’s] vehicle flowed directly from [Young’s] act of driving under the influence of alcohol,” and further found “[t]he total loss to [S.’s] vehicle was an economic loss that would not have occurred but for [Young’s] criminal act.” Based on the record before us, we cannot say the court abused its discretion in dismissing Young’s petition for post-conviction relief. The court did so in a detailed ruling that clearly identified the nature of Young’s arguments and correctly ruled on them in a manner that will allow any court in the future to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶7 We additionally note that, despite Young’s assertion that “[a] reasonable person would have had the damaged car towed to a repair shop after the initial collision,” S.’s conduct was not a superseding cause. Notably, Young’s conduct of driving while intoxicated increased the foreseeable risk he might strike another vehicle. *See Petolicchio v. Santa Cruz Cnty. Fair & Rodeo Ass’n*, 177 Ariz. 256, 263, 866 P.2d 1342, 1349 (1994) (“[I]t is almost always foreseeable that drinking and driving may lead to automobile accidents.”); *Rourk v. State*, 170 Ariz. 6, 12, 821 P.2d 273, 279 (App. 1991). And, in fact, the trial court found that S.’s loss was foreseeable, and noted that “[d]riving under the influence of alcohol leads to collisions with vehicles which lead to damages to vehicles.” An intervening cause cannot be considered a superseding cause when the defendant’s conduct “increases the foreseeable risk of a particular harm occurring

through the conduct of a second actor.” *Ontiveros v. Borak*, 136 Ariz. 500, 506, 667 P.2d 200, 206 (1983); *accord Slover*, 220 Ariz. 239, ¶ 11, 204 P.3d at 1093.

¶8 Therefore we grant the petition for review, but deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.