

Third District Court of Appeal

State of Florida

Opinion filed December 21, 2016.
Not final until disposition of timely filed motion for rehearing.

No. 3D16-168
Lower Tribunal No. 15-17949

Tony Nicholas,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

Carlos J. Martinez, Public Defender, and Natasha Baker-Bradley, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Christina L. Dominguez, Assistant Attorney General, for appellee.

Before ROTHENBERG, EMAS, and LOGUE, JJ.

PER CURIAM.

Affirmed.

LOGUE, J. (concurring)

I write this concurrence to discuss the scope of the Restitution Statute.

Tony Nicholas attacked his former girlfriend in her home, knocked her to the ground, and repeatedly punched her. In doing so, he knocked out the victim's top front tooth. Nicholas pled guilty to criminal mischief, battery, false imprisonment, felony battery, and to violating the conditions of his pretrial release. He was sentenced to four years' probation and was ordered to pay \$19,890 in restitution for the victim's corrective dental work. Nicholas now appeals the order of restitution. Because the trial court did not abuse its discretion in ordering the restitution, we affirm.

At the restitution hearing, the victim testified that years before the battery, she had spent approximately forty thousand dollars on "complete full-mouth porcelain veneers."¹ Immediately after the battery, she sought urgent dental care to replace her missing tooth. That corrective process involved reducing the two adjacent teeth and inserting a three-unit bridge.

The initial corrective procedure successfully replaced the missing tooth. But the color of the three-unit bridge did not match the victim's remaining teeth. The

¹ Her dentist testified that she had all-porcelain crowns before the battery, but this distinction makes no difference to our analysis.

victim's dentist explained at the hearing that this "physical difference in shade" was due to the metal framework in the bridge. The dentist testified that the only way to restore uniformity to the teeth as they were before the battery would be to replace all of the victim's crowns. This expert testimony was not contradicted. Accordingly, the trial court ordered the defendant to pay for the full-mouth restoration. Nicholas argues that the Restitution Statute authorizes payment only for the three-unit bridge and not the full-mouth restoration.

The restitution ordered by the trial court in this case was authorized by either section (1)(a) or section (2)(a) of the Restitution Statute. Section (1)(a) requires the defendant to pay restitution for any damages caused "directly or indirectly" by the defendant's offense, but gives the trial judge the authority to excuse the defendant from this payment for "clear and compelling reasons." It provides:

(1)(a) In addition to any punishment, the court shall order the defendant to make restitution to the victim for:

1. Damage or loss caused directly or indirectly by the defendant's offense; and
2. Damage or loss related to the defendant's criminal episode, unless it finds clear and compelling reasons not to order such restitution.

§ 775.089(1)(a), Fla. Stat. (2015).

The restitution ordered here falls within the broad language of section (1)(a) because the damages were caused "directly or indirectly by the defendant's

offense.” § 775.089(1)(a). The victim’s corrective procedures would not be necessary but for the defendant’s criminal conduct. But for the defendant’s act of knocking out the victim’s tooth, the victim would not have required a tooth replacement. And but for that replacement, the victim’s teeth would not show a “physical difference in shade.” The Restitution Statute’s inclusion of damages caused “indirectly” is intended to sweep broadly. Indirect damages under the Restitution Statute are broader in scope than damages covered by proximate cause in tort law. Like the concept of proximate cause, indirect damages under section (1)(a) of the Restitution Statute may be subject to implied limits which exclude damages that are too remote and attenuated. But the facts of this case do not implicate any such limit. As we have previously held, a victim’s medical choices, even if less-than-perfect, do not make causation too remote or attenuated and do not absolve the defendant from additional costs required to make the victim whole. See, e.g., Christenson v. State, 571 So. 2d 103, 104 (Fla. 3d DCA 1990) (requiring defendant to pay for victim’s medical treatment including costs that may have increased due to victim’s delay in seeking treatment).

Also, the restitution ordered by the trial court is authorized by section (2)(a). Section (2)(a) of the Restitution Statute requires the defendant to pay “the cost of necessary medical and related professional services and devices relating to

physical, psychiatric, and psychological care,” and provides the trial court no authority to excuse the defendant from this payment.

(2)(a) When an offense has resulted in bodily injury to a victim, a restitution order entered under subsection (1) shall require that the defendant:

1. Pay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing.

§ 775.089(2)(a).

The “necessary medical and related professional services” which are required to be paid by section (2)(a) are not narrowly limited to medical services required to keep the victim alive or return the victim to some minimal level of functioning. Instead, they include all medical services necessary to return the victim to her physical, medical, and psychological condition before the crime. Among other things, a victim is entitled to be paid for medical services necessary to return her to the physical appearance she had before the crime, including, for example, cosmetic surgery, and in this case, cosmetic dental work. This is the only reasonable interpretation of the statute in light of its purpose “to make the victim of a crime whole again—to the extent it is possible to do so.” L.O. v. State, 718 So. 2d 155, 157 (Fla. 1998). To hold otherwise would condemn the victim to be reminded of the assault every time she looked in the mirror, a result that cannot be reconciled with either the letter or the spirit of the Restitution Statute.

