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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0242**

State of Minnesota,
Respondent,

vs.

Arash Shakibi,
Appellant.

**Filed November 24, 2014
Reversed and remanded
Schellhas, Judge**

Dakota County District Court
File No. 19HA-CR-12-817

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Alina Schwartz, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

Robert J. Bruno, Robert J. Bruno, Ltd., Burnsville, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Following his conviction of reckless driving, appellant challenges the district court's restitution order. We reverse and remand for further proceedings consistent with this opinion.

FACTS

Police officers arrived at the scene of an accident on a frontage road abutting Ride Auto Company after a police dispatcher informed them that the parties to the accident were complaining of injuries, arguing, and threatening each other. The officers spoke with appellant Arash Shakibi, who said that he intentionally drove a truck off of the Ride Auto lot and hit a vehicle traveling on the frontage road. The vehicle was occupied by J.S.I. and L.S.I. and was solely owned by M.I.D., who was not present at the time of the accident. Shakibi told the officers that J.S.I. and L.S.I. violated a restraining order when they approached the Ride Auto property line and yelled at him. He told the officers that he collided with the vehicle to prevent J.S.I. and L.S.I. from leaving so that he could prove the restraining-order violation. The police learned that no such restraining order existed.

Paramedics examined J.S.I. and L.S.I. at the scene. Although both were ambulatory and not in apparent distress, they complained of neck and back pain and went to Fairview Ridges Hospital by ambulance. Fairview medical personnel diagnosed J.S.I. with cervical and lumbar strains and L.S.I. with cervical, thoracic, and lumbar strains and discharged the men with prescriptions for Ibuprofen and Flexeril. The collision caused damage to the front right corner of Shakibi's truck and to the back left quarter panel of M.I.D.'s vehicle. Although M.I.D.'s vehicle was operable after the collision, police towed and impounded it because neither J.S.I. nor L.S.I. presented a driver's license or proof of insurance and because both left the scene by ambulance.

Respondent State of Minnesota charged Shakibi with one count of gross misdemeanor criminal vehicular operation under Minn. Stat. § 609.21, subd. 1 (2010), and one count of misdemeanor reckless driving under Minn. Stat. § 169.13, subd. 1(a) (2010). Shakibi pleaded guilty to reckless driving, and the district court dismissed the other count. The court stayed imposition of sentence, placed Shakibi on probation for one year, and ordered Dakota County Community Corrections to complete a restitution study. After conducting a restitution hearing on August 1 and October 3, 2014, at which the district court received two restitution investigation summaries from Dakota County Community Corrections and documents and written submissions from the parties, the court issued a written order with findings, which include that “J.S.I. repaired the vehicle himself,” and ordered Shakibi to pay L.S.I. \$201.84 for medical expenses and to pay J.S.I. \$4,475.65 for medical expenses of \$364.01 and “\$4,111.64 for repairing M.I.D.’s vehicle.”

This court granted Shakibi’s petition for discretionary review. Because the district court did not record the proceedings before it, the parties submitted proposed statements of the proceedings to the district court under Minn. R. Civ. App. P. 110.03. The district court approved the state’s proposed statement of the proceedings. The statement as approved by the district court is included in the record. Minn. R. Civ. App. P. 110.03. On appeal, Shakibi challenges only that portion of the district court’s restitution order that grants J.S.I. restitution in the amount of \$4,111.64 “for repairing M.I.D.’s vehicle.”

DECISION

Shakibi argues that (1) J.S.I. is not the person who sustained loss in connection with the damage to M.I.D.'s vehicle and therefore he has no standing as a victim to request restitution; (2) J.S.I., as a repair contractor, is not entitled to restitution for economic loss that he did not sustain "as a Result of the Offense"; and (3) the state failed to prove by a preponderance of the evidence the amount and appropriateness of restitution.

We review a district court's decision to award restitution for an abuse of discretion. *State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999) ("This broad language [of Minn. Stat. § 611A.04, subd. 1(a) (1996)] clearly and unambiguously leaves the decision to award restitution to the discretion of the trial court, subject to review of an abuse of its discretion."); *see also State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007) ("We have recognized that the restitution statute's broad language gives the district court significant discretion to award restitution for a victim's expenses."). "Thus, we may not construe [section 611A.04] to exempt certain types of expenses, even though we may consider these expenses inappropriate. To do so would run contrary to the clear language of section 611A.04, delegating the decision to the sentencing court." *Tenerelli*, 598 N.W.2d at 671 (quotation omitted).

J.S.I.'s standing

Shakibi argues that J.S.I. lacks standing to request restitution for vehicle repairs to M.I.D.'s vehicle. Shakibi forfeited this argument because he did not raise it before the district court. *See State v. Johnson*, 851 N.W.2d 60, 64 (Minn. 2014) ("Generally, we will

not consider arguments that are made for the first time on appeal.”). Even if Shakibi had not forfeited this argument, it is misplaced. “The standing doctrine requires that *a party* have a sufficient stake in a justiciable controversy to seek relief from a court.” *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 663 (Minn. 2014) (emphasis added). “[T]he restitution proceeding uniquely and expressly implicates a *nonparty* The victim, an interested, typically unrepresented *nonparty* to the criminal proceeding, has rights and interests aligned with but independent of the state’s interests.” *State v. Miller*, 842 N.W.2d 474, 479 (Minn. App. 2014) (emphasis added), *review denied* (Minn. Apr. 15, 2014). J.S.I., who is a nonparty victim, need not have standing to request restitution in this criminal proceeding.

J.S.I.’s restitution request for M.I.D.’s vehicle repair cost

Shakibi argues that J.S.I. could not request restitution because he is a repair contractor who did not suffer harm as a direct result of the offense. Like the issue of standing, Shakibi did not raise this issue with the district court and therefore forfeited it. *See Johnson*, 851 N.W.2d at 64. Even if Shakibi had not forfeited this argument, it is unpersuasive.

Dakota County Community Corrections identified J.S.I. as a victim both with regard to his medical expenses and the vehicle repair cost. Shakibi acknowledges that he is liable for J.S.I.’s medical expenses but contests J.S.I.’s restitution claim for the vehicle repair cost because J.S.I. did not own the vehicle. Shakibi argues that J.S.I. is not entitled to restitution for costs that he incurred in repairing the vehicle because he was not a victim who suffered the loss under Minn. Stat. § 611A.04 (2010), which provides:

A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender if the offender is convicted or found delinquent.

Minn. Stat. § 611A.04, subd. 1(a). “‘Victim’ means a natural person who incurs loss or harm as a result of a crime” Minn. Stat. § 611A.01(b) (2010). “The primary purpose of restitution is to restore crime victims to the same financial position they were in before the crime.” *Johnson*, 851 N.W.2d at 65 (quotation omitted).

“[A] restitution request from victims [under Minn. Stat. § 611A.04] may include, but is not limited to, any *out-of-pocket losses* resulting from the crime.” *Johnson*, 851 N.W.2d at 65 (quotation omitted). “Restitution has limits. The district court should order restitution only for losses the defendant directly caused by the conduct that led to his conviction.” *Miller*, 842 N.W.2d at 477 (quotation omitted). A district court must determine whether “a restitution claim . . . [is] so attenuated in its cause that it cannot be said to result from the defendant’s criminal act.” *See Palubicki*, 727 N.W.2d at 667 (declining to adopt broad test that restitution may be recovered for any loss that would not have occurred “but for” the commission of the crime).

Shakibi’s reckless driving resulted in damage to M.I.D.’s vehicle while J.S.I. drove or occupied it. The necessity of repairing the vehicle was a direct result of Shakibi’s criminal act. We conclude that the vehicle repair cost was a “reasonably foreseeable” loss, *State v. Maxwell*, 802 N.W.2d 849, 852–53 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011), and was not “too attenuated from [Shakibi’s] criminal act,”

Palubicki, 727 N.W.2d at 667. The district court therefore did not abuse its discretion in awarding J.S.I. restitution for this loss.

Amount of restitution

Shakibi does not dispute that J.S.I. performed the repairs to the vehicle. He argues that the district court abused its discretion by awarding restitution to J.S.I. in the amount of \$4,111.64 for repairing M.I.D.'s vehicle because the state did not meet its burden of proof by a preponderance of the evidence. "The burden of demonstrating the amount of loss sustained by a victim is on the prosecution." *Johnson*, 851 N.W.2d at 65 (citing Minn. Stat. § 611A.045, subd. 3(a) (2012)). "The record must provide the court with a factual basis to award restitution." *Id.* "[I]f restitution is in the form of money or property, the information must include an itemization and description of the loss and reasons justifying the amounts claimed." *Hughes v. State*, 815 N.W.2d 602, 605 (Minn. 2012) (quotation omitted). "A dispute over the proper amount of restitution must be resolved by the district court by a preponderance of the evidence." *Johnson*, 851 N.W.2d at 65 (citing Minn. Stat. § 611A.045, subd. 3(a)). A district court abuses its discretion when it awards restitution in an amount that "far exceeds the loss attributable to the offense of which [a defendant] was convicted." *State v. Ramsay*, 789 N.W.2d 513, 518 (Minn. App. 2010).

In this case, although the state submitted J.S.I.'s affidavit, a repair estimate from ABRA Auto Body & Glass, and the restitution report of Dakota County Community Corrections, the record contains a dearth of evidence regarding losses incurred by J.S.I. in connection with the vehicle repair. The ABRA *estimate* itemized a list of parts and labor,

which amounted to \$4,111.64.¹ Both J.S.I.'s affidavit and the restitution report claimed the same amount but without any itemization. The state produced no evidence that the ABRA estimate reflected the actual loss incurred by J.S.I. and no receipts for parts or labor-hour logs from J.S.I. The state produced no evidence that all the work identified in the ABRA estimate was necessitated by Shakibi's criminal act. In regard to J.S.I.'s claim for the vehicle repair cost, the district court stated:

[I]t is difficult to determine a reasonable amount for this item given: (1) the large disparity between J.S.I.'s and Shakibi's repair estimates; (2) J.S.I. repaired the vehicle himself and *did not provide any evidence showing what was repaired and the actual cost and time expenditures for the repairs*; and (3) the lack of any objective evidence regarding whether the rear quarter panel could be repaired or required replacement.

(Emphasis added.) The district court nevertheless concluded that "the ABRA repair estimate of \$4,111.64 is competent evidence of the cost to restore M.I.D.'s vehicle to its pre-accident state." Because M.I.D., not J.S.I., is the owner of the vehicle, we disagree that the ABRA estimate is sufficient evidence of J.S.I.'s out-of-pocket losses.

We conclude that the state failed to meet its burden of proving J.S.I.'s out-of-pocket expenses by a preponderance of the evidence. We further conclude that the district court abused its discretion by awarding J.S.I. restitution of \$4,111.64 on the basis of the vehicle repair estimate instead of actual out-of-pocket expenses or losses incurred by J.S.I. as a result of Shakibi's criminal conduct.

¹ Shakibi submitted three repair estimates for parts and labor in the amounts of \$250, \$285, and \$405.

Shakibi contended at oral argument that this court should reverse the district court's restitution award for vehicle repair costs without remand to the district court because the state had an opportunity to prove J.S.I.'s losses and failed to do so. But to further the purpose of restitution, we reverse the district court's \$4,111.64 restitution award to J.S.I. for the cost of repairs to M.I.D.'s vehicle and remand for further proceedings that the district court, in its discretion, deems appropriate and consistent with this opinion.

Reversed and remanded.