STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0432

State of Minnesota,
Respondent,

vs.

Jeffrey Raymond Greenbush,
Appellant.

Filed November 23, 2020
Affirmed in part, reversed in part, and remanded
Worke, Judge

Scott County District Court
File No. 70-CR-18-14973

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

Appellant argues that the district court abused its discretion by awarding restitution in favor of his ex-wife for costs she incurred for (1) their adult daughter, (2) their sons who

were not victims of the crimes of conviction, (3) out-of-network therapy, and (4) a home security system. Appellant also challenges the manner in which restitution is to be reimbursed. We affirm the district court's award, except for the restitution awarded on behalf of the sons; on that issue, we reverse and remand for correction of the restitution amount awarded.

FACTS

Appellant Jeffrey Raymond Greenbush was married to L.G.; they had four children, two daughters (daughter 1 and daughter 2) and two sons (son 1 and son 2).

In late 2016, Greenbush was arrested for domestic assault against L.G. L.G. obtained an order for protection (OFP) that prohibited Greenbush from having contact with L.G. and returning to the family home. Greenbush was convicted of violating the OFP in April 2017, June 2017, and August 2017. Greenbush was also convicted of violating a related harassment restraining order in November 2017.

In January 2018, an investigation began after son 1 reported that Greenbush was a "child abuser." Son 1, age ten at the time, reported that Greenbush had been hitting him with closed fists and kicking him all over his body since he was around five years old.

Daughter 1, age 20 at the time, reported that Greenbush began abusing her when she was around six years old, and that there were "hundreds of incidents." Daughter 1 reported that the most recent incident occurred when she was 17 or 18 years old when Greenbush found out that she had a boyfriend. Greenbush threw her down the stairs and then attempted "to stomp on her head." Daughter 1 reported that when she was 15 years old, Greenbush began sexually abusing her.

Daughter 2, age 17 at the time, recalled Greenbush's abuse against her beginning when she was seven years old. She reported that the worst incident occurred when Greenbush found out that she knew that daughter 1 had a boyfriend. Daughter 2 reported that Greenbush "punched . . . and slapped her on the face with such force that she fell across the room and blacked out."

In August 2018, Greenbush was charged with two counts of criminal sexual conduct committed against daughter 1 and three counts of malicious punishment of a child committed against his daughters and son 1. The state later added three counts to the complaint: two counts of first-degree assault and one count of malicious punishment of a child.

In May 2019, Greenbush pleaded guilty to two counts in the amended complaint. He pleaded guilty to first-degree assault, admitting that in 2016 he kicked daughter 1 in the face, causing permanent damage to her teeth. Greenbush also pleaded guilty to malicious punishment of a child, admitting that in 2015, he slapped and punched daughter 2 in the face and head, knocking her unconscious. All remaining counts were dismissed. The district court sentenced Greenbush to 114 months in prison for the first-degree assault conviction and a concurrent 105 months in prison for the malicious-punishment-of-a-child conviction.

In August 2019, L.G. filed an affidavit requesting restitution for a camera security system for $581.93, a door-and-window security system for $794.53, counseling for $2,475, and psychological counseling and testing for $1,294.04. The district court ordered Greenbush to pay L.G. $5,145.50 in restitution. Greenbush requested a hearing.

At the restitution hearing, L.G. testified that she had a security system installed to feel more secure after Greenbush "was out of jail a few times," and had "let himself in [the family] house." L.G. requested to be reimbursed for the amount she spent on the children's counseling that started in 2019. On cross-examination, L.G. explained that she has insurance that covers talk therapy, and that she did not request to be reimbursed for the deductible. A psychologist submitted letters with L.G.'s restitution request recommending that the children receive neurofeedback therapy. She testified that the providers covered under her plan do "not provide the [neurofeedback] therapy that [her] kids need."

At the end of the hearing, the district court stated that "the costs are definitely all related to the abuse [Greenbush] inflicted." The district court ordered that the $5,145.50 in restitution be deducted from the sum that L.G. owed Greenbush under the terms of their judgment and decree. This appeal followed.

D E C I S I O N

Greenbush challenges the district court's restitution order. "The district court has broad discretion to award restitution, and the district court's order will not be reversed absent an abuse of that discretion." *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019) (quotation omitted). "A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

In imposing a sentence for a felony conviction, a district court may include the payment of restitution to compensate "the victim or the victim's family." Minn. Stat. § 609.10, subds. 1(a)(5), 2(a)(1) (2018). "A victim of a crime has the right to receive

restitution as part of the disposition of a criminal charge . . . if the offender is convicted . . . ." Minn. Stat. § 611A.04, subd. 1(a) (2018).

The term "victim" means "a natural person who incurs loss or harm as a result of a crime." Minn. Stat. § 611A.01(b) (2018). The term "includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person." *Id.* The supreme court has interpreted the term "victim," in the restitution context, to mean "the direct victim of the crime." *State v. Jones*, 678 N.W.2d 1, 25 (Minn. 2004). A district court abuses its discretion by awarding restitution to a person who does not meet the legal definition of a victim. *State v. Esler*, 553 N.W.2d 61, 65 (Minn. App. 1996), *review denied* (Minn. Oct. 15, 1996). Whether a person seeking restitution fits within the statutory definition is a question of law, which this court reviews de novo. *See In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006) (noting that application of restitution statutes to particular claim is a question of law), *review denied* (Minn. Aug. 15, 2006).

"A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including medical and therapy costs, [and] replacement of wages and services . . . ." Minn. Stat. § 611A.04, subd. 1(a). Such loss must be a direct result of the specific conduct for which the defendant was convicted. *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999). "[W]hether a particular item of restitution fits within the statutory definition is a question of law and is fully reviewable by the appellate court." *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000).

Adult victim

Greenbush first argues that because daughter 1 is now an adult, she, rather than L.G., should have requested restitution for her therapy. Greenbush claims that the district court erred by awarding restitution to L.G. because L.G. is not a victim. The state counters that daughter 1 did not have any economic loss because L.G. paid for therapy for daughter 1. We agree with the state.

First, there is no dispute that daughter 1 is a victim under the statute. And Greenbush does not suggest that daughter 1 does not need therapy. Second, although the term "victim" in the restitution context has a narrow definition, in some circumstances it means a family member who has suffered an economic loss as a direct result of the offender's conduct. For example, in *State v. O'Brien*, the parents of a bride-to-be were considered victims entitled to restitution after the offender pleaded guilty to perjury regarding the annulment of a prior marriage. 459 N.W.2d 131, 132, 135 (Minn. App. 1990). While *O'Brien* was decided before the narrow definition in *Jones* was released in 2004, this court relied on *O'Brien* in 2006, stating that "[a] parent of a victim is considered a victim for restitution purposes if she suffers economic harm directly resulting from the crime." *M.R.H.*, 716 N.W.2d at 351.

Under these circumstances, when the need for therapy is uncontested and the victim's mother paid for the therapy costs, the mother suffered an economic loss directly resulting from the crime. The district court appropriately exercised its discretion by ordering Greenbush to pay L.G. the amount she spent on therapy for daughter 1.

Sons' therapy

Greenbush argues that the district court also erred by awarding L.G. restitution "for the cost of therapy for her two sons, as neither of them are victims of [his] offenses." Based on *Jones*, Greenbush is correct that his sons are not victims of the offenses of conviction—the victims are Greenbush's daughters. *See* 678 N.W.2d at 25 (stating that in restitution context "victim" means "the direct victim of the crime"). Thus, the district court erred by awarding restitution for the sons' therapy.

Out-of-network provider

Greenbush argues that even if he must pay for therapy costs, he should not be ordered to pay for "out-of-network therapy costs, when [his] offenses did not directly cause a need for therapy provided by an out-of-network provider [and] in-network therapy is available."

A request for restitution may include "any out-of-pocket losses resulting from the crime, including medical and therapy costs." Minn. Stat. § 611A.04, subd. 1(a). The statute does not require the victim to seek particular therapy. Nor does it require a victim to ease the cost imposed on the offender. L.G. testified that her insurance covers talk therapy but for a deductible, which she paid and did not request restitution. L.G. testified that the neurofeedback therapy was necessary for her children. She provided letters from the children's psychologist recommending this treatment. And L.G. did not suggest that there was an in-network provider offering the neurofeedback therapy. Instead, she testified that the providers covered under her plan do "not provide the [neurofeedback] therapy that [her] kids need." The district court believed L.G., and this court generally defers to a

district court's evaluation of witness credibility. *See State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016).

Because there is nothing in the statute suggesting that a victim must secure therapy that is covered by her insurance, and the district court believed that L.G. chose the most appropriate therapy for her children, the district court did not err by concluding that the neurofeedback therapy for the daughters was a recoverable item of restitution.

Security system

Greenbush next argues that he should not have to pay restitution for the security system because the offenses were committed in 2015 and 2016 when he lived in the home, and the offenses did not involve a "burglary or breaking and entering." Greenbush asserts that the "link between the crimes and the security system is too attenuated to be compensable [because] [t]hey were separated by long spans of time [and] attenuated in relationship."

The parties recognize that the issue of whether a security system is an item recoverable as restitution has not been addressed in a precedential opinion in Minnesota. But this court has determined that, in some cases, a security system is a recoverable item of restitution. In *State v. Mentzos*, the offender was convicted of terroristic threats for conduct against his ex-girlfriend. No. C8-93-2577, 1994 WL 425172, *1 (Minn. App. Aug. 16, 1994), *review denied* (Minn. Sept. 16, 1994). Because of his actions, the victim's family bought a security system and hired security personnel. *Id.* The offender was required to pay restitution to the family for the cost of security personnel. *Id.* This court stated that "[t]he purpose of making terroristic threats is to cause the victim to fear for his

or her safety. Thus, we hold that reasonable expenditures made by a victim to ensure his or her safety are a 'result' of the terroristic threats within the meaning of the statute." *Id.* at *3. Thus, the costs for security to ensure a victim's safety have been recovered as an item of restitution.

Here, the offenses—first-degree assault and malicious punishment of a child—occurred in 2015 and 2016 when Greenbush lived in the home. In late 2016, Greenbush was arrested for domestic assault against L.G., and she obtained an OFP prohibiting him from returning to the family home. Greenbush did not abide by the OFP and was convicted of violating it three times in 2017. L.G. had the camera security system installed in 2017 because Greenbush "was out of jail a few times." L.G. had the door-and-window security system installed after Greenbush had "let himself into [the family] house" "quite a few times." Thus, following the offense dates, the family did not feel safe because Greenbush continually returned to the home even after being convicted of violating the OFP. The district court appropriately determined that the security system is an out-of-pocket loss resulting from the crimes and is an item of restitution.

Manner of reimbursement

Finally, Greenbush challenges the manner in which restitution is to be reimbursed. At the restitution hearing, the district court stated that because Greenbush was in prison, it was unlikely that L.G. would "ever see a dime." The district court then invited the parties to propose ideas as to how L.G. could collect the restitution. Greenbush's attorney stated: "It is my knowledge there is a divorce proceeding [and] I understand there's proceeds from that." The prosecutor explained that, as part of the divorce decree, L.G. owed Greenbush

for equity in the home. The district court stated: "I can enter an order in the dissolution file . . . that'd probably be the easiest way to handle it, to simply deduct that from what [L.G.] owe[s] him." Greenbush never challenged the manner of reimbursement in district court; thus, the issue is forfeited on appeal. *See State v. Johnson*, 851 N.W.2d 60, 64 (Minn. 2014) (declining to consider a restitution argument raised for the first time on appeal).

Accordingly, we affirm the district court's award of restitution to L.G. for therapy for daughter 1, out-of-network therapy, and the home security system. But because the district court erred in determining that the sons were victims and that their therapy costs were items of restitution, we reverse and remand for the district court to deduct this amount from the restitution award. Finally, because Greenbush failed to raise the manner-of-reimbursement issue in district court, it is forfeited on appeal.

Affirmed in part, reversed in part, and remanded.