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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1617**

State of Minnesota,
Respondent,

vs.

Angela Tharnaa Hooks,
Appellant.

**Filed April 24, 2017
Affirmed
Stauber, Judge**

Ramsey County District Court
File No. 62-CR-14-4188

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

John J. Choi, Ramsey County Attorney, Thomas B. Hatch, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from an order requiring appellant to pay \$1,000 in restitution to each of the 21 direct victims of the identity-theft offense of which appellant was convicted,

appellant argues that (1) the district court abused its discretion by awarding restitution to three of the victims because evidence that they were direct victims of appellant's offense was presented at the restitution hearing, but not at trial; (2) the district court erred by concluding that the rules of evidence do not apply at restitution hearings; (3) the mandatory restitution provision of Minn. Stat. § 609.527, subd. 4(b) (2012) violates appellant's right to procedural due process; and (4) Minn. Stat. § 609.527, subd. 4(b) violates appellant's substantive due-process rights. We affirm.

FACTS

In June 2014, appellant Angela T. Hooks was charged with one count of identity theft involving eight or more victims in violation of Minn. Stat. § 609.527, subds. 2, 3(5), 7 (2012). A jury found appellant guilty of the charged offense, and the district court sentenced appellant to 117 months in prison. The district court also ordered appellant to pay \$1,000 to each of the 22 direct victims as required by Minn. Stat. § 609.527, subd. 4(b) (2012). On appeal, this court affirmed appellant's conviction. *State v. Hooks*, No. A15-1520 (Minn. App. Aug. 22, 2016), *review denied* (Minn. Nov. 15, 2016).

On July 31, 2015, before filing her notice of appeal challenging her conviction, appellant filed an objection to the restitution award. Appellant argued that the record did not support a restitution award to all 22 individuals because there was no evidence introduced at trial that four of these individuals were victims of the identify-theft count charged by the state. Appellant also claimed that the statutory-minimum restitution award of \$1,000 per direct victim violated her right to procedural due process.

At the restitution hearing, the state conceded that one of four challenged individuals was not a direct victim of appellant's identity theft. The state then sought to present evidence that the remaining three individuals, J.M., V.S., and B.Y., were direct victims of appellant's identity theft. Appellant objected, arguing that "[b]ecause the state did not prove at trial that these [three] individuals were victims, the state cannot [include] them in[] the restitution pool by presenting evidence at a post-sentencing hearing."

The district court disagreed and allowed the state to present evidence that the credit cards of J.M., V.S., and B.Y. had been stolen and used by appellant. During the presentation of this evidence, appellant objected on the grounds of hearsay and insufficient foundation. The district court conditionally admitted the state's evidence and took the issue under advisement. The district court later concluded that the rules of evidence "do not apply at a restitution hearing." The district court also determined that based upon the evidence presented by the state, restitution to J.M., V.S., and B.Y. was "proper" because they "are direct victims of [appellant's] crime." Finally, the district court concluded that appellant's due-process argument fails under *State v. Moua*, 874 N.W.2d 812 (Minn. App. 2016), *review denied* (Minn. Apr. 19, 2016). Therefore, the district court denied appellant's challenge to the restitution order. This appeal followed.

D E C I S I O N

I.

Unlike fines, which are typically punitive in nature, the aim of restitution is to either rehabilitate the defendant or compensate the victim. *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984). Generally, restitution may cover, but is not limited to, "any out-of-

pocket losses resulting from the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007) (quotation omitted). Ordinarily, a district court has broad discretion to award restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). But the identity-theft statute requires the district court to “order a person convicted of [identity theft] to pay restitution of not less than \$1,000 to each direct victim of the offense.” Minn. Stat. § 609.527, subd. 4(b).

Appellant argues that because no testimony or other evidence about victims J.M., V.S., or B.Y. was “introduced at the jury trial on the underlying charged substantive offense, they cannot be victims of the offense of conviction.” Appellant also contends that because the state “did not prove at trial that these three individuals were victims, the state cannot bootstrap them into the restitution pool by presenting evidence at a post-sentencing hearing.” Thus, appellant argues that the district court abused its discretion by awarding restitution to J.M., V.S., and B.Y.

To support her claim, appellant cites several cases in which a restitution award was reversed on the basis that the award was for offenses not actually charged or committed by the defendant. *See State v. Latimer*, 604 N.W.2d 103, 104 (Minn. App. 1999) (holding that a defendant who pleads guilty to being an accomplice after the fact to murder may only be required to pay restitution to the murder victim’s parents for the losses directly caused by her actions and may not be required to pay restitution for the losses resulting from the murder); *see also State v. Esler*, 553 N.W.2d 61, 62 (Minn. App. 1996) (concluding that a court order directing payment of restitution to an individual who has been victimized by the actions of the defendant is improper when the injury to that

victim results from a separate criminal incident unrelated to the crime of conviction); *State v. Nelson*, 796 N.W.2d 343, 349 (Minn. App. 2011) (modifying restitution order when the district court erred by including as restitution items of loss that were not directly caused by the conduct for which the defendant was convicted). But these cases are distinguishable. Here, appellant was convicted of a single count of identity theft involving eight or more victims, and the district court awarded restitution to the 21 alleged victims. The fact that there were 21 alleged victims is not inconsistent with the charged offense because the offense of conviction simply requires that there be eight *or more* victims. See Minn. Stat. § 609.527, subd. 3(5). Clearly, 21 victims is more than eight victims. Therefore, restitution was awarded consistent with the charged offense.

Because no evidence pertaining to J.M., V.S., or B.Y. was presented at trial, the question we must address is whether the district court abused its discretion by allowing the state to present evidence at the restitution hearing that these individuals were victims of appellant's offense. We conclude that the procedure set forth in the restitution statute anticipates that evidence other than that presented at trial may be presented at a restitution hearing to demonstrate a victim's losses that are the direct result of the offense. Under Minnesota's restitution statutes, the victim of a crime has the right to receive restitution for a loss caused by a convicted criminal offender. Minn. Stat. § 611A.04, subd. 1 (2012). Before ordering restitution under this statute, the district court must receive proof of the amount of loss, which the victim can provide by affidavit or by "other competent evidence." *Id.* Proof of the amount of loss must include a description of the items lost, itemized costs, and reasons for the amount if it is "in the form of money or property." *Id.*

Moreover, “[t]he court administrator shall provide copies of this request to the prosecutor and the offender or the offender’s attorney at least 24 hours before the sentencing or dispositional hearing.” *Id.* The defendant may then challenge the restitution request by producing an affidavit “setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims.” Minn. Stat. § 611A.045, subd. 3 (2012).

The procedure set forth in the restitution statutes demonstrates that, after a defendant is convicted, either by trial or guilty plea, the victim submits the proof of loss. This procedure indicates that the district court may consider new evidence in determining restitution if that evidence pertains to the offense of conviction. This determination is supported by the fact that the evidence necessary to prove the elements of a charged-offense crime may be markedly different from the evidence necessary to prove entitlement to restitution. For example, an individual who left his cell phone at a friend’s house that was later destroyed by arson is a victim of the offense and may be entitled to restitution from the offender convicted of arson for the loss of the cell phone. But evidence of the cell phone destroyed during the arson would likely not be admitted at trial because it is unrelated to whether the offender committed the arson. As a result, this evidence would need to be presented at a subsequent restitution hearing.

Moreover, Minn. Stat. § 611A.04, subd. 1(b)(3), specifically provides that the district court may amend an order of restitution after the sentencing or dispositional hearing if “the true extent of the victim’s loss . . . was not known at the time of the

sentencing or dispositional hearing, or hearing on the restitution request.” This provision anticipates that certain losses may be proved *in the future* and provides a mechanism for the court to amend a restitution order. It also indicates that evidence not presented at trial may be used in determining restitution. Accordingly, based on the statutory provisions included in the restitution statute, the district court did not abuse its discretion by considering new evidence of J.M., V.S., and B.Y.’s claimed losses at the restitution hearing.

II.

Appellant argues that the district court erred “when it ruled that the Minnesota Rules of Evidence do not apply at restitution hearings,” and that the state’s “admissible evidence did not prove that appellant committed identity theft against the three disputed claimants.” But this argument was recently rejected by this court in *State v. Willis*, 883 N.W.2d 838 (Minn. App. 2016), *review granted* (Minn. Oct. 26, 2016). In that case, this court held that “[b]ecause the obligation to pay restitution is a part of a sentence, and the rules of evidence do not apply to sentencing proceedings, it follows that the evidentiary rules do not apply to restitution hearings.” *Id.* at 840. Therefore, under current law, the district court did not err by determining that the rules of evidence do not apply at restitution hearings. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (holding that “[t]he district court, like this court, is bound by . . . the published opinions of the court of appeals”), *review denied* (Minn. Sept. 21, 2010).

III.

Procedural due process requires the government to “provide an individual with notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (quotation omitted). In determining whether the government has violated an individual’s procedural due-process rights, we conduct a two-step analysis. *Moua*, 874 N.W.2d at 815. First, we “must identify whether the government has deprived the individual of a protected life, liberty, or property interest.” *Sawh*, 823 N.W.2d at 632. If the government has deprived a person of a protected interest, we then determine “whether the procedures followed by the [government] were constitutionally sufficient.” *Id.* (alteration in original) (quotation omitted). “Whether an individual’s due-process rights have been violated is a question of law, which we review de novo.” *Moua*, 874 N.W.2d at 815.

Appellant argues that the mandatory minimum amount of restitution required by section 609.572, subdivision 4(b), is “unconstitutional because it violates her right to procedural due process of law.” We disagree. Appellant’s argument was recently rejected by this court in *Moua*.¹ In that case, this court implicitly recognized that the minimum-restitution provision raises concerns that an individual’s right to property may be deprived by an order of restitution. *Moua*, 874 N.W.2d at 816. But the court also determined that the procedures employed by the government were sufficient to provide a defendant with notice and an opportunity to challenge the restitution. *Id.* at 815

¹ Appellant acknowledges the holding in *Moua*, but “raises the issue to preserve it for further review.”

(explaining that the defendant had notice at his plea hearing that the state could seek restitution, and he had an opportunity to challenge restitution at a separate hearing).

Here, as in *Moua*, appellant received notice and had the opportunity to challenge the restitution award. Thus, appellant was not deprived her right to procedural due process.

IV.

Finally, appellant argues that Minn. Stat. § 609.527, subd. 4(b), violates substantive due process. But appellant concedes that she “did not make this specific argument” to the district court. It is well settled that “ordinarily” this court will “not consider issues raised for the first time on appeal, even when those issues are . . . challenges to the constitutionality of a statute.” *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2001). Thus, appellant has forfeited her substantive due-process argument.

Moreover, even if addressed on the merits, appellant’s argument fails. Appellant generally asserts that Minn. Stat. § 609.527, subd. 4(b), “infringes on [her] fundamental right to property.” But this court recently rejected a general assertion that the minimum-restitution statute infringes on a fundamental right to property. *State v. Rey*, 890 N.W.2d 135, 139-40 (Minn. App. Jan. 9, 2017), *review granted* (Minn. Feb. 28, 2017). The court addressed the constitutionality of the statute under the rational-basis test because no fundamental right was implicated. *Id.* This court held that because the means utilized in the statute are rationally related to the legitimate governmental purpose of compensating victims of crimes, the minimum-restitution provision of the identity-theft statute does not

violate substantive due process. *Id.* Accordingly, under *Rey*, appellant's substantive due-process argument fails.

Affirmed.