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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1881**

State of Minnesota,
Respondent,

vs.

Daniel Josphe Kriesel,
Appellant.

**Filed July 23, 2018
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69DU-CR-17-61

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

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean M. McGuire, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Daniel Josphe Kriesel pleaded guilty to felony domestic assault against a former girlfriend. The district court ordered him to pay restitution to the victim in an amount that includes approximately \$700 for lost wages. We conclude that the record supports the

district court's finding that the victim missed work for six weeks because of Kriesel's assault. Therefore, we affirm.

FACTS

In the early morning hours of December 29, 2016, the Duluth police department received a report of domestic abuse at an apartment. A few hours earlier, Kriesel had approached his former girlfriend, P.S., in the parking lot of the restaurant where she worked as a server. Kriesel persuaded her to allow him to go with her to her apartment. While there, Kriesel yelled at P.S. and "push[ed] her around." He pushed her into a shelf, which caused her to fall and hit her head. P.S. left the apartment and screamed for help. When officers arrived, they saw her "lying on the floor in a state of undress and bleeding profusely from her hair and facial area." An ambulance transported her to a hospital, where medical personnel closed a laceration along her hairline with three staples. She also was treated for significant swelling and bruising on her left cheek.

The state charged Kriesel with felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 4 (2016). Kriesel and the state entered into a plea agreement by which he pleaded guilty to the charge in exchange for an agreement to a downward durational departure of one year and one day in prison. At a sentencing hearing in April 2017, the district court imposed the agreed-upon sentence and left the issue of restitution open for 60 days.

In May 2017, P.S. filed a request for restitution in which she sought, among other things, \$2,052.43 in lost wages for a six-week period. At a restitution hearing in June 2017, counsel informed the district court that they had agreed to prepare and file a stipulation of

facts relevant to restitution. In July 2017, the parties stipulated that P.S.’s average net pay (exclusive of tips) was \$116.51 per week before the assault, that she did not work as a server for six weeks after the assault, and that “[t]he total amount of lost net pay, if the court were to find that [P.S.] was unable to work for six weeks as a result of the offense, is \$699.04.” Kriesel opposed P.S.’s restitution request on the grounds that the state failed to prove that P.S. was actually unable to work during the six-week period or that her inability to work was caused by the assault. Kriesel also argued that he is unable to pay restitution because he is incarcerated and has approximately \$5,000 in outstanding debts.

In August 2017, the district court granted P.S.’s request for restitution in the amount of \$759.04, which includes \$699.04 for lost wages. Kriesel appeals.

D E C I S I O N

Kriesel argues that the district court erred by ordering him to pay restitution to P.S. for her lost wages. Kriesel contends that the state did not prove that P.S. was unable to work after the assault or that her inability to work was directly caused by the assault. The state did not submit a responsive brief. *See* Minn. R. Civ. App. P. 142.03.

In Minnesota, restitution awards are governed primarily by statute. *See* Minn. Stat. §§ 611A.04-.45 (2016); *see also State v. Gaiovnik*, 794 N.W.2d 643, 646-52 (Minn. 2011). The “primary purpose” of restitution is “to restore crime victims to the same financial position they were in before the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). Accordingly, “A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted” Minn. Stat. § 611A.04, subd. 1(a). “A request for restitution may include, but is not limited

to, any out-of-pocket losses resulting from the crime, including . . . replacement of wages” *Id.*

In determining whether to order restitution and in what amount, a district court must consider “(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a). A victim’s loss must “have some factual relationship to the crime committed.” *State v. Nelson*, 796 N.W.2d 343, 347 (Minn. App. 2011); *see also State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984) (concluding that factual record did not support restitution award). In addition, the victim’s “compensable loss must be directly caused by the conduct for which the defendant was convicted.” *Nelson*, 796 N.W.2d at 347 (quotation omitted); *see also State v. Ramsay*, 789 N.W.2d 513, 517-18 (Minn. App. 2010) (reversing restitution award that “far exceed[ed] the loss attributable to the offense”). Furthermore, a victim’s loss must be “a reasonably foreseeable result of” the defendant’s actions, *State v. Maxwell*, 802 N.W.2d 849, 853 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011), and cannot be “so attenuated in its cause that it cannot be said to result from the defendant’s criminal act,” *Palubicki*, 727 N.W.2d at 667.

The state bears the burden of proving, by a preponderance of the evidence, “the amount of loss sustained by a victim as a result of the offense.” Minn. Stat. § 611A.045, subd. 3(a); *see also State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014). If a victim has sustained a loss, the district court has “significant discretion” to determine the amount of restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). This court applies an

abuse-of-discretion standard of review to a district court's decision concerning an award of restitution. *Id.* at 672.

In this case, the parties stipulated that P.S. did not work as a restaurant server for six weeks after the assault. The question raised by Kriesel's appeal is whether she did not work during that six-week period because of the assault. Kriesel contends that there is a lack of evidence supporting that causal connection. He also contends that her physical injuries were not so serious that they would have prevented her from working. He further contends that P.S. missed work because of chemical dependency. In the district court, the state argued that P.S. was unable to work after the assault because it caused her to "suffer fear, anxiety and some panic" due to the fact that the incident began in the parking lot of her workplace. The state acknowledged that P.S. had admitted to using drugs and alcohol during the six-week period but argued that the assault triggered her drug and alcohol dependency. The district court generally agreed with the state's argument and found that "the assault was the proximate cause of the victim's six-week absence from work."

The evidentiary record concerning restitution is relatively sparse. Neither party presented any live testimony at the restitution hearing. Rather, the parties elected to provide the district court with a relatively short stipulation of facts. But the record also includes P.S.'s victim-impact statement, which the district court received at the sentencing hearing. A district court may rely on a victim-impact statement when considering the issue of restitution. *See Tenerelli*, 598 N.W.2d at 671-72; *State v. Anderson*, 507 N.W.2d 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993).

P.S.'s victim-impact statement is a relatively lengthy, detailed, and strongly worded description of the emotional impact, physical impact, and financial impact of Kriesel's assault. She stated that she remained fearful after the assault and that she found it difficult to remain in her apartment. She stated that she hid from friends and family members because she had "bruises and cuts on [her] face/head" and "could not bear to let people in [her] life see [her]." She stated that she "could barely chew" food because of the injuries to her jaw and "struggle[s] with headaches." With respect to the financial impact of the assault, she stated,

After the incident, I tried returning to work, but was triggered by the [assault]. I looked at the parking lot and work felt unsafe. I was unable to go back to work for 6 weeks and financially was unable to support myself as best as I could before the incident. I ended up having to apply for financial support while I dealt with the emotional impact of all of this, and that was something I never thought I'd have to do. I struggled to buy groceries because I was unable to work.

P.S.'s victim-impact statement supports the district court's finding that Kriesel's assault caused her to miss work for six weeks after the assault. P.S.'s loss of income has a "factual relationship to the crime committed" because the assault arose from contact between Kriesel and P.S. in the parking lot of her workplace. *See Nelson*, 796 N.W.2d at 347. P.S.'s loss of income was "directly caused by the conduct for which the defendant was convicted" because, but for the assault, she would not have been injured and would not suffered the emotional, physical, and financial consequences described in her victim-impact statement. *See id.*

Thus, the district court did not err by ordering restitution in an amount that includes \$699.04 in lost wages.

Affirmed.