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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1632**

State of Minnesota,
Respondent,

vs.

Johnny Earl Edwards,
Appellant.

**Filed June 17, 2019
Affirmed
Jesson, Judge**

Anoka County District Court
File No. 02-CR-17-3290

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County
Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

JESSON, Judge

After being convicted of second-degree murder, appellant Johnny Earl Edwards was
ordered to pay restitution, including \$1,509.30 for the cost of a unit used to store the

victim's belongings. Edwards appeals, arguing that the storage costs were not a direct result of the conduct for which he was convicted, and that, in any event, the state failed to meet its burden of proving the amount and reasonableness of those costs. Because the storage unit fees were not unduly attenuated from Edwards's criminal conduct, and because the state's documentation was sufficient to prove the amount of restitution was appropriate, we affirm.

FACTS

In May 2017, appellant Johnny Earl Edwards and a codefendant went to a house in Fridley to buy marijuana. When they arrived at the house, two men were already there—the homeowner and the victim. After Edwards saw the marijuana, he decided to steal it. When the homeowner started walking towards the door, Edwards pulled a gun out to stop him and “be in control at the moment.” When the victim saw the gun, he “rushed” Edwards, and Edwards shot him. Edwards and the codefendant grabbed the marijuana and left. Before police arrived at the house, the victim died.

The state charged Edwards with two counts of second-degree murder. Edwards pleaded guilty to second-degree felony murder. At the sentencing hearing, the district court imposed an aggravated sentence of 363 months in prison.

At the state's request, the district court left the issue of restitution open for 30 days. After requesting and receiving an extension, the state requested restitution on behalf of the

victim's family in the amount of \$14,865.53, including \$1,509.30 for storage costs.¹ As documentation for the storage costs, the state submitted a printout from a credit union statement. The printout showed seven payments for public storage.

Edwards objected to the restitution award and requested a hearing. Regarding the storage costs, Edwards stated in his affidavit that “[t]he restitution for the ‘storage’ costs is not supported by documents as to why those costs ha[ve] a nexus to this case.” At the contested restitution hearing, the state addressed the storage costs:

[The victim] lived with [his brother] on and off and had belongings in [his brother's] home. The storage costs reflected for \$1,509.30. After [the victim] died, [his brother] gathered his things and put [t]hem in short-term storage until [the victim's] children could go through the items.

. . . .

He didn't want to look at [the victim's] belongings anymore, so he cleared out the room he was using and put those belongings in storage.

After the hearing, the district court issued an order granting the state's restitution request in full. Specifically, the district court noted that “[t]he [s]tate argued the storage fees were reasonable because the victim's brother had to box the victim's belongings and put them in storage. The [s]tate has met its burden of establishing by the preponderance of the evidence that the expenses are reasonable and ‘resulted from’ the murder.” Edwards appeals.

¹ The entire itemized list is as follows: \$9,116.51 for funeral costs; \$265.79 for memorial programs; \$34 for the victim's birth certificates; \$1,030 for monuments; \$2,909.93 for funeral catering costs; and \$1,509.30 for storage costs.

DECISION

Edwards argues that the district court abused its discretion by ordering him to pay \$1,509.30 in restitution for storage costs. Specifically, Edwards first asserts that his conduct did not directly cause the economic loss related to the cost of the storage unit. He further contends that the state failed to prove the amount and reasonableness of the loss. We address each issue in turn.

The district court has broad discretion to award restitution, and this court will not reverse a district court's order absent an abuse of that discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). And the district court's factual findings will not be disturbed unless they are clearly erroneous. *Id.* But deciding “whether an item meets the statutory requirements for restitution is a question of law that is fully reviewable” by this court. *State v. Nelson*, 796 N.W.2d 343, 346-47 (Minn. App. 2011) (quotation omitted).

Under the restitution statute, a victim may request restitution for a specific loss if the defendant is convicted of a crime. Minn. Stat. § 611A.04, subd. 1(a) (2016). A restitution request “may include, but is not limited to, any out-of-pocket losses resulting from the crime.” *Id.* But “a loss claimed as an item of restitution by a crime victim must have some factual relationship to the crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted.” *Nelson*, 796 N.W.2d at 347 (quotation omitted).

Here, Edwards was convicted of second-degree murder. And while Edwards concedes that his criminal conduct was the but-for cause of the storage costs, he asserts that the connection between the storage costs and his criminal conduct is “so attenuated in

its cause that it cannot be said to result from [Edwards's] criminal act.” *State v. Palubicki*, 727 N.W.2d 662, 667 (Minn. 2007). We disagree.

In addressing Edwards's argument, we are guided by the supreme court's decision in *Palubicki*. In *Palubicki*, the district court ordered restitution for expenses arising from a murder victim's children's voluntary attendance at the defendant's trial. 727 N.W.2d at 666. The defendant argued that the children's expenses in voluntarily attending the trial did not directly result from the crime for which he was convicted. *Id.* But the supreme court determined that the children were “in court as a direct result of [the defendant's] crime.” *Id.* at 667. Though the children's attendance at trial was not mandatory, the supreme court concluded that the district court did not abuse its discretion when it ordered restitution for the expenses accrued by the victim's children. *Id.* Here, as in *Palubicki*, the challenged restitution—the storage costs—were not mandatory. But when a murder victim is living in another person's home, and leaves behind belongings, it may be necessary—though not mandatory—to move the victim's belongings elsewhere. Here, the victim's brother moved the belongings to a storage unit, thereby allowing the victim's children to go through them on their own accord. As such, we conclude that the connection between Edwards's criminal conduct and the cost of the storage unit is not so attenuated that we cannot determine that the storage unit cost resulted from the victim's murder.

Still, Edwards suggests that “[a]lthough the storage costs are an out-of-pocket economic loss, the actual costs here were incurred as a result of the emotional pain and grief felt by [the victim's] brother.” Restitution is not available for a victim's pain and suffering. See *State v. Colsch*, 579 N.W.2d 482, 484 (Minn. App. 1998) (holding that

“restitution is limited to recovery of economic damages sustained by the victim”). While the victim’s brother did not want to look at the belongings anymore, presumably because of grief, his grief was not the only reason he placed his brother’s items into a storage unit. The victim’s children needed to sort through the belongings, and a storage unit was an appropriate option to store the items. As such, we conclude that the district court did not abuse its discretion by ordering restitution for the cost of the storage unit.

Finally, Edwards asserts that even if the storage costs were a direct result of the murder, the state’s evidence relating to the storage expenses does not provide a sufficient foundation for the \$1,509.30 claim to be reasonable and appropriate.

Minnesota Statutes section 611A.045, subdivision 3(a) (2016) states that “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.” And “[i]nformation submitted relating to restitution must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or property.” Minn. Stat. 611A.04, subd. 1(a). When disputed, the amount of restitution must be proved by a preponderance of the evidence. Minn. Stat. § 611A.045, subd. 3(a).

In support of its restitution request, the state filed documentation describing the items of loss, including the storage unit cost, and the dollar amounts for each item. Specifically, the documentation for the storage unit was a printout from an online credit union account showing seven payments made between June 2017 and November 2017 for public storage. The documentation lists the dates and amounts paid. And at the restitution

hearing, the state specified the justification for the storage unit costs—the victim’s brother gathered the victim’s belongings, and placed them in a storage unit, which allowed the victim’s children to sort through the items. Accordingly, we conclude that the state met its burden and proved the amount of restitution by a preponderance of the evidence.²

But Edwards argues that there are no receipts for the storage costs, only proof of payment evidenced by a bank printout. Our consideration of this argument is guided by *State v. Keehn*, 554 N.W.2d 405 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996); *see also State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014) (vacating restitution award and remanding for further fact-finding when record contained no evidence to support damage claim). In *Keehn*, a portion of the restitution request did not include an itemized listing of expenses. 554 N.W.2d at 407. This court remanded for further findings, but noted that it was “not requiring receipts or proof of exact purchase price, but rather a list, as required by statute, with reasonable specificity describing the items or elements of loss and the dollar amount of those losses.” *Id.* at 408. Here, as in *Keehn*, the state was not required to provide receipts. And unlike *Keehn*, the state provided an itemized list of all expenses, including the storage costs. Further, the bank printout provided by the state identified each payment made for “Public Storage.” Accordingly, we conclude that the district court did not abuse its discretion in ordering restitution for the storage unit fees.

In sum, because the cost of the storage unit was not so attenuated from Edwards’s conduct, and because the documentation provided by the state was sufficient to prove that

² Edwards does not challenge, nor did he argue at the district court, that the state provided the reasons justifying the storage unit costs in its argument without supporting testimony.

the amount of restitution was appropriate, we affirm the district court's restitution order for the cost of the storage unit.

Affirmed.