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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1934**

State of Minnesota,
Respondent,

vs.

Yusuf Abdirahman Yusuf,
Appellant.

**Filed June 10, 2019
Affirmed
Hooten, Judge**

Blue Earth County District Court
File No. 07-CR-16-4891

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Steven P. Groschen, Kohlmeyer Hagen Law Office Chtd., Mankato, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal following a district court's restitution order, appellant claims that following his conviction for burglary, the district court abused its discretion in awarding restitution for certain costs that arose from the crime. We affirm.

FACTS

This case begins with a brutal burglary and assault by appellant Yusuf Abdirahman Yusuf and his brother. They broke into A.A.'s apartment while he was home, beat him with their fists and with a pistol, and took personal property from his apartment.¹ As a result of the assault, A.A. suffered bodily harm including a swollen bloody eye, a bloody lip, and damage to his teeth. The medical bills totaled \$22,044.26 and the dental bills totaled \$4,067.22. The apartment and furniture were also damaged during the burglary and needed cleaning and repair. The cleaning cost \$412.42 and A.A.'s mattress had to be replaced at a cost of \$200. After being assaulted and robbed in his apartment, A.A. was also afraid to return and stayed with a friend until he got a new apartment. He did not take any actions to cancel his lease. The total cost of accumulated rent and late fees from the time between when A.A. was assaulted and when his former landlord terminated his lease is \$5,403.65. A.A. testified that he did not pay this rent because he had rented a new apartment, and he could not pay both rents.

¹ Specifically, they stole A.A.'s laptop, phone, and firearm.

Following his arrest, appellant pleaded guilty to first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(c) (2016). At the time of sentencing, the district court awarded restitution in the amount of \$32,127.55, accounting for the costs noted above. Appellant timely requested a restitution hearing. Before the hearing, the parties agreed the amount of restitution accounting for medical bills should be reduced from \$22,044.26 to \$13,226.56.

At the restitution hearing, A.A. testified about his losses, and the district court ordered appellant to pay a total of \$23,309.85 in restitution. This included the medical expenses, dental expenses, cost of the mattress, cleaning fees, and accumulated rent and late fees from the apartment. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred in awarding restitution for the rent and late fees from the apartment where he assaulted A.A. and for the dental expenses associated with the assault.

A victim of a crime has the right to receive restitution that “include[s], but is not limited to, any out-of-pocket losses resulting from the crime.” Minn. Stat. § 611A.04, subd. 1(a) (2018). “A 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. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “[F]actual findings will not be disturbed unless they are clearly erroneous.” *Id.* But questions of law are subject to de novo review. *Id.*

Costs from vacating the apartment

Appellant first argues that the district court erred in ordering him to pay for some portion of A.A.'s rent and associated late fees. Appellant claims that he should not be responsible for A.A.'s late fees and rent because after some period of time, those costs were not a foreseeable consequence of appellant's burglary and assault.² But appellant does not cite to any authority which requires that the damages resulting from a crime need to be foreseeable to the criminal at the time he commits the crime.

In support of his argument, appellant cites *State v. Maxwell*, 802 N.W.2d 849 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). But that case only mentions foreseeability in dicta; it never holds or even assumes that foreseeability is necessary. *Id.* at 853. The real issue in the case was whether Maxwell's illegal use of the victim's identity directly caused the victim's credit issues, such that Maxwell should have to pay restitution for the victim's engagement of subsequent "credit-shield and repair-protection services." *Id.* The court resolved the issue by holding, "There is a direct causal link between appellant's identity theft and the victim's inability to refinance his home mortgage and subsequent purchase of credit consulting and protection." *Id.* at 852. While the court did opine that the damages were also foreseeable, it did not purport to create a requirement of foreseeability of damages for restitution. *See id.* at 853.

² Appellant specifically notes that he "is not contesting that [A.A.] was afraid to live in the apartment after the assault. Nor is he contesting that [A.A.] deserved a reasonable period following the assault to determine how to address the apartment damage and the lease."

And appellant has failed to cite to any authority requiring that damages were reasonably foreseeable to the defendant at the moment that he or she committed their crime. The only requirement is that the victim's losses be "directly caused" by the crime. *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999) (quotation omitted). We therefore reject appellant's argument that we should impose a new rule requiring that restitution may only be imposed when the damages were foreseeable at the time of the crime.

Arguably, another claim that appellant raises in this section is that the rent and late fees are too attenuated from the attack to hold him responsible for those costs. Appellant cites to *State v. Palubicki* for this proposition, but does not explain how or why it should apply. See 727 N.W.2d 662, 667 (Minn. 2007) (noting in dicta that "the potential exists for a restitution claim to become so attenuated in its cause that it cannot be said to result from the defendant's criminal act"). That case involved a similar claim to appellant's, in that Palubicki claimed that the expenses of the victim's children³ that arose from their decision to attend his trial for murder and the victim's funeral were not directly caused by his crime. *Id.* The Minnesota Supreme Court rejected this argument and held that the crime directly caused these expenses, and it was supported by the testimony of one of the victim's two children that she "felt a strong obligation" to attend the trial. *Id.* While the court noted that there could potentially be a case where damages were too attenuated to assign them to a defendant, it held that Palubicki's was not that case. *Id.* ("We conclude,

³ The expenses were "lost wages, the cost of meals, and travel expenses." *Palubicki*, 727 N.W.2d at 664.

however, that this case does not present a claim where the claimed loss is too attenuated from the criminal act.”).

This reliance on testimony of the need of the victim’s children to attend the trial is similar to the district court here relying on A.A.’s feeling that he could not return to the apartment after appellant brutally assaulted him there. Just like in *Palubicki*, the district court did not base its restitution order on the minimum amount of damages that A.A. could have endured as a result of the crime; rather, it correctly based its decision on the damages to A.A. that appellant directly caused. We therefore also reject appellant’s assertion that the rent and late fees are too attenuated from his assault and robbery of A.A.

Appellant’s argument could also be construed to raise a claim that A.A. is not entitled to restitution because he failed to mitigate damages by not terminating his lease earlier once he knew that he was not going to return to the apartment. But this is not a situation where a duty to mitigate arises. *Cf. Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 92 (Minn. App. 2014) (“Generally, the party alleging a loss because of a tort or breach of contract has a duty to mitigate damages.”). Appellant and his brother brutally beat A.A. as part of a home invasion and robbery. Following such a traumatic event, it logically follows that the victim might not act rationally for some time after. And crucially, appellant cites no authority requiring crime victims to mitigate damages in order to receive restitution. Therefore, assuming that appellant has raised a claim that he is not liable for costs that A.A. failed to mitigate, that claim also fails.

Cost of dental care

Appellant next argues that the district court erred by concluding that the state had met its burden to establish the cost of A.A.'s dental care. While the issue is framed in a manner that would avoid the correct standard of review, this is a challenge to the district court's implicit⁴ factual finding that appellant received \$4,067.22 worth of dental work to fix the damage from appellant's assault. And as stated above, "factual findings will not be disturbed unless they are clearly erroneous." *Andersen*, 871 N.W.2d at 913.

Here, there is support in the record for the district court's finding. A.A. submitted an affidavit declaring the cost of his dental work and also testified about the cost. The record contains nothing to contradict this evidence, and the district court found A.A.'s testimony to be credible. While appellant takes issue with the absence of receipts or bank documents showing what the dental work cost, appellant does not submit any authority that would impose a requirement for such documents when there is other supporting evidence in the record.

⁴ In its findings of fact, the district court noted that A.A. submitted an affidavit and testified as to the amount of the dental work (submitting that the work cost \$4,067.21 and \$4,067.22 respectively), but did not make an explicit factual finding about how much the dental work cost. The district court did credit this number in its calculation of what restitution appellant owed. The total amount awarded was \$23,309.85. Subtracting out the amounts for rent, late fees, cleaning the apartment, medical bills, and the cost of the ruined mattress, the district court must have relied on A.A.'s testimony about the cost of his dental work when it awarded him \$4,067.22 in restitution for it.

We therefore reject appellant's argument and affirm the district court's finding that the dental work cost \$4,067.22 as not clearly erroneous.⁵

Affirmed.

⁵ If appellant really does intend to claim that the state had a burden to submit dental bills or documents purporting to show that A.A. paid for his dental care, this claim would also fail. Appellant did not submit any legal authority requiring such evidence, and so his claim would have to be dismissed as undeveloped and not properly before the court. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017).