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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0049**

State of Minnesota,
Respondent,

vs.

Ricia Monet Harvey,
Appellant.

**Filed September 23, 2019
Reversed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-16-18834

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Kalitowski, Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Ricia Monet Harvey pleaded guilty to failing to stop at the scene of a traffic collision involving great bodily harm. The parties did not agree that Harvey would pay restitution for dismissed charges in exchange for her plea. The district court entered a restitution order for \$11,173. Harvey challenges the district court's restitution order as contravening the restitution statute.¹ Because Minn. Stat. § 611A.045, subd. 1(a)(1), permits restitution only for "economic losses sustained by the victim as a result of the offense" and the state failed to provide evidence that the victims' losses were directly caused by Harvey's crime of failing to immediately stop at the scene of a traffic collision involving great bodily harm, we reverse.

FACTS

In July 2016, Harvey and D.C. were involved in a traffic collision that caused D.C. to sustain spinal injuries and required amputation of his left leg at the knee. The Crime Victims Reparation Board (CVRB) reimbursed D.C.'s lost wages in the amount of \$10,998.

Based on the district court's findings at the restitution hearing, the collision occurred at a controlled traffic-light intersection in Minneapolis. Harvey, traveling in the northbound lane, initiated a left turn, crossed into southbound traffic, and struck D.C. on a

¹ Harvey also asserts that restitution cannot be imposed because her actions were only a contributory factor to any economic loss sustained by the victims rather than the direct cause. We need not reach this issue because the district court erred by ordering restitution in a manner inconsistent with Minn. Stat. § 611A.045, subd. 1(a)(1) (2014).

motorcycle while D.C. was in the middle of the intersection. Harvey stopped momentarily before driving away and was apprehended soon thereafter by law enforcement. Because of this conduct, the state initially charged Harvey with criminal vehicular operation causing great bodily harm, in violation of Minn. Stat. § 609.2113, subd. 1(7) (2014), and driving while under the influence of alcohol, in violation of Minn. Stat. § 169A.20, subd. 1(1) (2014).

Harvey retained an expert who opined that D.C. was traveling between 39.16 to 42.00 miles per hour through the intersection and assumed Harvey was traveling 10 miles per hour while making the turn at the intersection. The expert additionally opined that: “If the motorcycle was traveling the posted speed limit of 30 mph at the time [Harvey] began [her] left turn, [Harvey] would have had sufficient time to accelerate and clear the intersection[,]” resulting in a determination that D.C.’s speed was the “primary contributing factor” to the collision. Following a *Frye-Mack* hearing,² over the state’s objection, the district court ruled that the expert may testify at trial regarding his conclusions.

Following the district court’s *Frye-Mack* ruling, the state dismissed the charge of driving while under the influence. In addition to other charges, the state also added a charge of failing to stop at the scene of a traffic collision involving great bodily harm, a felony offense, in violation of Minn. Stat. § 169.09, subs. 1, 14(a)(2) (2014).

² “A *Frye-Mack* hearing is a pretrial hearing regarding the admissibility of scientific evidence.” *State v. Tanksley*, 809 N.W.2d 706, 708 n.1 (Minn. 2012); *see also Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); *State v. Mack*, 292 N.W.2d 764 (Minn. 1980).

Plea discussions followed. The state agreed to dismiss all charges including—and most importantly for our discussion—criminal vehicular operation causing great bodily harm, in exchange for Harvey’s plea of guilty to the newly-added offense of failing to stop at the scene of a traffic collision involving great bodily harm. The parties reached no agreement on restitution. During the plea colloquy, Harvey and her attorney engaged in the following exchange regarding restitution:

[DEFENSE COUNSEL]: And you have indicated to me you do not agree that you should pay restitution, but the prosecutor and I have agreed that we will file the necessary paperwork to ask for a restitution hearing, and [the district court] will schedule that after we file our paperwork. That will be after the sentencing. Correct?

[HARVEY]: Yes.

[DEFENSE COUNSEL]: So, it’s clear that I haven’t made any promises to you. The amount of restitution or whether you owe restitution will be up to the Judge based on the law and the facts as are presented at a restitution hearing, right?

[HARVEY]: Right.

[DEFENSE COUNSEL]: But I haven’t promised you what the Judge is going to do about that?

[HARVEY]: Right.

Harvey provided the following factual basis for her guilty plea: Harvey admitted being involved in a collision with a motorcycle; that she left the scene without rendering aid; she did not contact the police; she did not provide insurance information; and she agreed that the collision resulted in great bodily harm to D.C. The district court accepted Harvey’s guilty plea.

Following sentencing, Harvey timely submitted a request for a restitution hearing. At the restitution hearing, Harvey acknowledged she intended to proceed only on stipulated evidence and waived her right to cross-examine witnesses, right to live testimony, and right

to testify, and the parties stipulated to the exhibits to be submitted. Defense counsel identified the sole restitution claim as “the issue of causation and whether or not restitution is due.”

The district court ordered Harvey to pay \$175 to D.C. and \$10,998 to the CVRB as restitution. In addressing causation, the district court found that “[Harvey] struck the motorcycle near its rear end when the motorcycle was about mid-intersection. D.C., not [Harvey], had the right of way.” Although Harvey disputed causation based on her expert’s opinion, the district court reasoned that:

Even if [Harvey’s expert’s] opinions were accepted, [d]efendant [was] not exonerated from being a contributory cause of the accident as well. Notably, her expert never states [d]efendant’s acts were not a cause. Viewing the evidence in the light most favorable to the [d]efendant, the actions of both [d]efendant and D.C. contributed to causing the accident. To order restitution, [d]efendant’s criminal conduct does not have to be the sole cause of the loss. . . . Defendant’s acts were a direct cause of the accident and she is therefore liable for restitution.

This appeal follows.

DECISION

“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). “But questions concerning the authority of a district court to order restitution are questions of law subject to de novo review.” *Id.*

Restitution functions as a mechanism for victims of crimes to be restored to their same financial position prior to the offense. *State v. Palubicki*, 727 N.W.2d 662, 666

(Minn. 2007). “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”³

Minn. Stat. § 611A.04, subd. 1(a) (2014).

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, replacement of wages and services, expenses incurred to return a child who was a victim of a crime under section 609.26 to the child’s parents or lawful custodian, and funeral expenses.

Id.

When the district court addresses restitution, it analyzes two criteria: “(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) (emphasis added). Harvey solely challenges the first criteria for restitution.

The supreme court recognizes that the first criteria for restitution requires “the district court to consider the economic loss sustained by the victim as a consequence of the defendant’s violation of the law.” *State v. Riggs*, 865 N.W.2d 679, 686 (Minn. 2015). Any loss suffered by a victim, however, 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 general rule articulated in *Palubicki* and *Riggs* is that a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the

³ The CVRB qualifies as a victim for restitution when it pays reparations on a victim’s behalf. *Evans v. State*, 880 N.W.2d 357, 360-61 (Minn. 2016).

defendant's crime." *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019) (footnote omitted).

Harvey pleaded guilty to failing to stop at the scene of a traffic collision involving great bodily harm, in violation of Minn. Stat. § 169.09, subds. 1, 14(a)(2). This offense requires a "driver of any motor vehicle involved in a collision" to "immediately stop the vehicle at the scene of the collision, or as close to the scene as possible, and reasonably investigate what was struck." Minn. Stat. § 169.09, subd. 1. Pursuant to section 169.09, subdivision 14(a): "The driver of any vehicle who violates subdivision 1 or 6 and who *did not cause the collision*" is guilty of a felony "if the collision results in great bodily harm to another, as defined in section 609.02, subdivision 8." (Emphasis added.)

Harvey argues that the district court's restitution order contravenes the restitution statute by erroneously concluding that the victims' losses were directly caused by the offense for which she was convicted. Harvey fairly construes the district court's restitution order. The district court reasoned that Harvey is responsible for restitution because: "As [Harvey] turned left, [Harvey] struck the motorcycle near its rear end when the motorcycle was about mid-intersection. D.C., not [Harvey], had the right of way." These facts, however, are unrelated to the offense that Harvey pleaded guilty to as part of her plea agreement. See Minn. Stat. § 169.09, subds. 1, 14(a)(2). In fact, Harvey pleaded guilty to an offense that presumes she did *not* cause the collision. See Minn. Stat. § 169.09, subd. 14(a) ("The driver of any vehicle who violates subdivision 1 . . . and who did not cause the collision . . ."). Additionally, at no time during her plea colloquy did Harvey admit to causing the collision.

As the supreme court recently held in *Boettcher*, “a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” 931 N.W.2d at 381 (footnote omitted). Harvey pleaded guilty to an offense of failing to stop at the scene of a traffic collision involving great bodily harm. Based upon the record, there is no evidence that the losses claimed were directly caused by, or followed naturally as a consequence of, this offense.

Had Harvey’s guilty plea included an agreement to pay restitution to the victims as it related to the collision, this analysis would be different. *See id.* at 381 n.5 (“Principles that apply to criminal restitution in guilty-plea cases are inapplicable.”) (citation omitted); *see also State v. Kennedy*, 327 N.W.2d 3, 4 (Minn. 1982) (permitting a defendant to pay restitution for a victim’s losses not identified in the complaint in exchange for dismissing charges). Instead, the parties acknowledged that Harvey would contest a restitution award, and Harvey did not agree that she would be ordered to pay restitution. We therefore conclude the district court erred in ordering Harvey to pay restitution.

The state asserts two alternative theories to affirm the district court’s restitution order. Both theories are unpersuasive in light of the legal authority on restitution.

First, the state contends that Harvey’s act of failing to stop at the scene of a traffic collision involving great bodily harm constituted a forfeiture of her right to challenge restitution. The state provides no precedent to support this proposition. Pursuant to Minn. Stat. § 611A.045, subd. 1(a)(1), a district court must determine that an economic loss was sustained by the victim as a result of the offense. The state’s theory would create an exception to this statutory language, and this court cannot supply language that the

legislature omitted unless the words would not modify the statute's scope and operation. *See State v. Ahmed*, 791 N.W.2d 296, 298 n.1 (Minn. App. 2010), *review denied* (Minn. Feb. 15, 2011). The state's argument would require this court to modify the restitution statute, so we cannot take such a step.

Second, the state argues that because Harvey's criminal conduct of failing to stop at the scene of a traffic collision involving great bodily harm is so intertwined with her action of causing the collision, restitution is permitted. Pursuant to *Boettcher*, appellant's argument must fail. *See* 931 N.W.2d at 381.

As the supreme court similarly noted in *Boettcher*, it is important to recognize that this decision should not be construed to limit D.C. or the CVRB from being able to seek relief through a civil action. *See id.* at 382 n.6. "A decision for or against restitution in any criminal . . . proceeding is not a bar to any civil action by the victim . . . against the offender." *Id.* (quoting Minn. Stat. § 611A.04, subd. 3 (2018)) (alteration in original).

Reversed.