

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0050**

State of Minnesota,
Respondent,

vs.

Braylen Justice Miller,
Appellant.

**Filed August 28, 2023
Affirmed
Connolly, Judge**

Scott County District Court
File No. 70-CR-20-11139

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the restitution order entered as part of his sentence for aiding
and abetting intentional second-degree murder, arguing that the district court abused its
discretion by (1) refusing to reduce the restitution ordered for the victim's mother's lost

wages because she received money from an online fundraising campaign related to her emotional distress and (2) by awarding restitution for the lost wages because those losses were not directly caused by appellant's offense. Because we see no abuse of discretion, we affirm.

FACTS

In February 2020, appellant Braylan Miller, then 16, arranged to meet S.K., also 16, to sell him some marijuana. Appellant drove his father, Taran Miller, to buy the marijuana. After some confusion about the meeting place, Taran Miller told appellant to drive first to their home to pick up his gun, and appellant did so. They then met S.K. in a store's parking lot. Taran Miller got into the back seat, and S.K. got into the front passenger seat to examine the marijuana. Taran Miller told S.K. to close the car door. When S.K. refused, Taran Miller shot him in the head. Appellant and Taran Miller left S.K. lying in the parking lot and drove home, where Tanya Miller, Taran's wife and appellant's mother, helped them hide the car. S.K. was taken to a hospital where he died of the gunshot wound.

Appellant and both his parents were arrested. Taran Miller was charged with first-degree murder. He died in jail in December 2020. Tanya Miller was charged with and pleaded guilty to aiding a person that she knew had committed a criminal act as an accomplice after the fact and was sentenced to 48 months in prison. She challenged her sentence, which this court affirmed in *State v. Miller*, 964 N.W.2d 459 (Minn. App. 2021) (holding that an accomplice after the fact may be sentenced to not more than 20 years), *aff'd*, 977 N.W.2d 592 (Minn. 2022).

Appellant was initially charged with aiding and abetting second-degree murder and with second-degree felony murder. He was then indicted with aiding and abetting first-degree premeditated murder and aiding and abetting first-degree felony murder, became ineligible for extended juvenile jurisdiction, and was certified as an adult. Appellant pleaded guilty to a charge of aiding and abetting second-degree intentional murder and agreed to a sentence of between 261 and 336 months in prison.

Appellant was sentenced to 336 months in prison; he challenged his sentence, which was affirmed. *State v. Miller*, No. A22-0920 (Minn. App. Mar. 27, 2023) (holding that there was no abuse of discretion in a sentence within both the guideline range and the plea-agreement range), *rev. denied* (Minn. June 20, 2023). Appellant was also ordered to pay restitution in the amount of \$37,563.57 to S.K.'s father, D.K., and his mother, J.K.

Appellant challenged the restitution order. Following a hearing, the district court reduced the amount of restitution to \$30,528.43 on the ground that D.K. should be compensated only for the wage he would actually have received for the 160 hours he did not work, or \$9,271.26, and not for a \$33.91 per hour fringe benefit, or \$16,304.¹ Appellant now argues that the district court abused its discretion by not deducting from restitution the amount that J.K. and D.K. received from an online fundraising campaign and by awarding restitution for wages J.K. lost due to her emotional distress.

¹ A de minimis reduction of \$2.40 was also made to the restitution; the district court agreed with appellant that J.K. received that amount as a reward on a credit card when she paid \$240 for therapy and was therefore entitled to only \$237.60 in restitution.

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. The district court's factual findings will not be disturbed unless they are clearly erroneous. But questions concerning the authority of the district court to order restitution are questions of law subject to de novo review.

State v. Andersen, 871 N.W.2d 910, 913 (Minn. 2015) (citations omitted).

1. The Online Fundraising Campaign Reduction in Restitution

“A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . if the offender is convicted.” Minn. Stat. § 611A.04, subd. 1(a) (2022). “The term victim includes the family members . . . of a . . . deceased person.” Minn. Stat. § 611A.01 (b) (2022). To determine the amount of restitution, a district court considers “the amount of economic loss sustained by the victim as a result of the offense and “the income resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2022).

S.K.'s parents received \$10,774.18 as the result of an online fundraising campaign started by a friend on their behalf. They used this sum to compensate for J.K.'s lost wages, for which they did not request restitution. The district court found:

that [J.K.'s] lost wages were not claimed in the restitution request, and [she] credibly testified that the [online fundraising] money was used to cover only her lost income and retirement contributions. Therefore, refusing to reduce the restitution claim by the [online fundraising] money does not reimburse [D.K. and J.K.] twice for the same loss.

Appellant argues that the \$10,774.18 should be deducted from the restitution amount. But the online fund money was a gift from contributors to J.K. and D.K., to be spent as they chose.

Moreover, appellant has not shown that any item for which D.K. and J.K. claimed restitution was already paid for or has since been paid for by funds from another source. Other family members and friends may have privately contributed money, services, or other gifts to J.K. and D.K.; there would be no basis for deducting these from appellant's restitution obligation either. We see no basis for deducting the online fund money from appellant's restitution obligation.

2. Restitution for Emotional Distress Damages

Appellant argues that the district court erred in awarding damages for wages lost by D.K. due to taking time off to care for J.K.'s emotional distress because her emotional distress was not directly caused by appellant's "offensive behavior," i.e., setting up a drug sale, obtaining a firearm at his father's direction, and creating a foreseeable risk that use of a firearm could result in a killing. But the restitution statute now defines "victim" as "the family members, guardian or custodian of a . . . deceased person." *State v. Christensen*, 901 N.W.2d 648, 653 (Minn. App. 2017) (quotation omitted). D.K., a family member of a deceased person, suffered a wage loss due to the emotional distress of another family member of the deceased person, J.K. D.K. was entitled to restitution for the lost wages.

Appellant also argues that the district court erred in concluding that J.K. "would still have been able to run the household and care for herself if not for the murder" of S.K. He relies on *State v. Boettcher*, 931 N.W.2d 376, 380-81 (Minn. 2019) (rejecting the state's

argument that a “but-for” test should apply in restitution matters and clarifying the rule as permitting restitution “only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime”). *Id.* at 381. But since Boettcher, this court has held that the emotional distress of a parent resulting from harm caused to a child is well within the purview of the restitution statute. *See, e.g., State v. Allison*, No. A22-0793, 2023 WL 125854 at *3 (Minn. App. Jan. 9, 2023) (affirming restitution for the lost wages and therapy expenses of a child-victim’s mother and holding that mother’s “therapy costs and lost wages are precisely the types of losses contemplated by the restitution statute”), *rev. granted* (Minn. March 28, 2023).²

Affirmed.

²While *Allison* is a nonprecedential opinion, we find its analysis persuasive, and appellant has not identified any reason for us not to follow it. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions are nonbinding but may be cited as persuasive authority).