

Restitution for Distributing Video of a Minor's Sexual Assault

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A Portion of the Victim's Losses Were Proximately Caused by Defendant's Distribution of the Video of the Sexual Assault, and the Court Did Not Err in the Amount Awarded

DOI:10.29158/JAAPL.003773-18

In *United States v. Hoskins*, 876 F.3d 942 (8th Cir. 2017), the Eighth Circuit Court of Appeals affirmed the lower court's restitution award for knowing distribution of a visual depiction of a minor engaged in sexually explicit conduct. The appeals court ruled that the evidence presented to the district court provided a basis that the injuries to the victim arose, not only from the sexual assault, but, in part, from the distribution of the video. Furthermore, the district court neither abused its discretion nor clearly erred in deciding to award restitution or in assessing the amount of damages to be awarded to the victim.

Facts of the Case

After a weekend at Jessyca Hoskins' apartment drinking, smoking cannabis, and going to nightclubs, the victim, a 14-year-old girl, was introduced to a male acquaintance of Ms. Hoskins with the intention that he would send the girl into prostitution. He subsequently introduced the victim to a man whom Ms. Hoskins video recorded having sex with the victim while others watched. During the filming, the victim requested that the activity be stopped. Ms. Hoskins later sent the video to several people. Upon learning of the incident, the victim's mother took the victim to a hospital, and the police were contacted. The two men involved were convicted in state court,

one of prostitution and sexual assault and the other of sexual assault. In federal court, Ms. Hoskins received charges, including but not limited to, the knowing distribution of a visual depiction of a minor engaged in sexually explicit conduct. During sentencing, the victim's mother testified about the impact of the offense on the victim. Pertaining to the videotaping and distribution, she described that the victim had a dislike of being recorded and had nightmares about it. Ms. Hoskins pleaded guilty and received a sentence of 72 months imprisonment and a \$2,400 fine. The court set a further hearing regarding the matter of restitution.

The district court determined \$54,895 in total damages for the victim. This total was based on \$11,895 in documented losses provided by the victim's mother, \$3,000 in incurred but undocumented losses, and \$40,000 in future expenses for psychological treatment, based on a projected 15 years of therapy at a modest weekly amount. The court reasoned *Paroline v. United States*, 134 S.Ct. 1710 (2014) to be instructive, as the case addressed how to assess the proximate cause of a victim's losses from portrayal in distributed child pornography, and it involved an injury caused by the distribution of images of a victim's rape. The court concluded that Ms. Hoskins proximately caused a significant portion of the total damage, although most of the damage was attributable to others, and ordered her to pay \$7,500 in restitution. She appealed this judgment, arguing that the state had failed to meet its burden of proving the amount of loss based on a preponderance of the evidence and that her conduct was not the proximate cause of the victim's injury.

Ruling and Reasoning

The United States Court of Appeals for the Eighth Circuit affirmed the district court's order of restitution, finding that the estimate for future psychological expenses was not clearly erroneous and that the evidence provided a basis to conclude that some of the damage to the victim was caused specifically by the defendant's disseminating the video of the victim's sexual assault.

Ms. Hoskins argued that, because no expert medical testimony was provided, no evidence was available for the district court to conclude how much therapy would be needed, thus making \$40,000 an arbitrary number. The Eighth Circuit noted that the allowance for damages for the future costs of therapy

is well established, citing *United States v. Funke*, 846 F.3d 998 (8th Cir. 2017). The court stated, “Although predicting future psychological damages is notoriously difficult, the district court was required only to make a reasonable estimate, not to establish the victim’s future treatment costs with certainty” (citing *United States v. Palmer*, 643 F.3d 1060 (8th Cir. 2011)). The court noted that, in the presence of already incurred expenses, the determination of future expenses could rely on the testimony of the victim and her mother, as well as “a basic knowledge of medical expenses,” citing *United States v. Emmert*, 825 F.3d 906 (8th Cir. 2016), and found “no reason that an estimate of future medical expenses cannot be based on similar evidence, so long as the estimate is reasonable” (*Hoskins*, p 946).

Ms. Hoskins also claimed that the district court erred in relying on *Paroline* in determining that the defendant was the proximate cause of the victim’s injury. She argued that a “traditional causal analysis” model should have been used because there was not as wide a distribution of the material as there was in *Paroline* (*Hoskins*, p 946). However, the Eighth Circuit Court of Appeals noted that, pursuant to *Paroline*, restitution is proper to the extent that the offense proximately caused a victim’s losses. Although *Paroline* did not use a but-for causation model, the court found that this model was not required, and restitution could be awarded in an amount “that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses” (*Paroline*, p 1727). In point of fact, the court noted that a but-for argument actually simplifies the case at hand, as all losses related to distribution can be traced directly to the actions of Ms. Hoskins. The court noted that the “real gravamen of Hoskins’ argument” was that the medical and psychological treatment that the victim received was related to the sexual abuse she experienced and that Ms. Hoskins should not be responsible for damages from the “sexual exploitation and assault” (*Hoskins*, p 947). The court found that the evidence clearly identified aspects of the victim’s injuries that were specifically attributable to the distribution of her images. The court again referenced *Paroline*, stating that “a court must assess as best it can from available evidence the significance of the individual defendant’s conduct in light of the broader causal process that produced the victim’s losses. This cannot be a precise mathematical inquiry and involves the use of discretion and

sound judgment” (*Paroline*, p 1727–8). Therefore, the court did not clearly err in awarding restitution or deciding the amount.

Discussion

This case expounded upon the ability of courts to order restitution for future psychological expenses likely to be incurred by a victim as a result of a defendant’s role in the causal process. In the first point of contention, the court of appeals supported the lower court’s procedural estimation of damages, citing that the court is required only to make a reasonable estimate of future damages, not to predict them with certainty. In empowering the court to develop this estimate through sound judgment and whatever available evidence it deems necessary, this finding removes court reliance on expert testimony for estimation of future medical costs, as long as estimates are “reasonable.” In regard to causation, the district court ordered Ms. Hoskins to pay a portion of the restitution based on her involvement in the victim’s injuries, determining that she was the proximate cause of the damage through distribution of the video, despite having no direct physical participation in the assault itself. The ruling in this case allows future court decisions more laterality in determining estimates of future psychological expenses. In addition, by rejecting the argument that restitution is limited to the physical act of the offense, the case validated that distributing recordings of the offense can be a proximate cause of loss, warranting that a portion of the damages be awarded to the victim.

Disclosures of financial or other potential conflicts of interest: None.

Deliberate Indifference to Inmate Suicide Risk and Qualified Immunity in Correctional Settings

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