IN THE COURT OF APPEALS OF IOWA

No. 7-378 / 96-1840

000575

FILED
JUL 30 1997
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

TONY ANTHONY,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

Tony Anthony appeals the victim restitution order imposed pursuant to his conviction for third-degree burglary. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Jill Pitsenbarger, County Attorney, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Tony Anthony appeals the victim restitution order imposed pursuant to his conviction for third-degree burglary. Anthony contends the State failed to prove a causal connection between the criminal act and the amount of restitution.

Background facts. Tony Anthony was convicted of third-degree burglary, based on an incident where he broke into his girlfriend's (Amy) residence and took money: He showed up at her bedroom window at 3:30 a.m. and knocked on the glass, waking her up, then "instantly became enraged and ripped the screen out of the window" and broke the entire metal frame that held the glass in place. Among other things, Anthony was ordered to pay $1027.60 in restitution, $220 to the victim, and the rest in court costs and attorney fees. These items are not contested on appeal.

The State filed two subsequent motions to amend Anthony's sentence to include an additional total of $891.57 restitution to the Crime Victim Assistance Program, for additional medical and psychological services provided to Amy. Following a hearing, the district court granted the State's motion and approved the new restitution amount.

Scope of review. We review the district court's decision to correct errors of law. Iowa R. App. P. 4; *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989) (citing *State v. Akers*, 435 N.W.2d 332, 333 (Iowa 1989)).

Restitution. Anthony contends the State has failed to show, by a preponderance of the evidence, that a causal connection exists between his criminal

act and the $891.57. Anthony also contends that to the extent the State connects the crime to the victim's treatment for mental or emotional health, these types of damages are statutorily exempt from recovery as restitution.

The restitution order must rest on a "causal connection between the established criminal act and the injury to the victim." *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). The damage must have been caused by the offender's criminal act to justify the restitution order. *Id.* at 377-78. The State must show, through a preponderance of the evidence, the relationship between the damage caused by the criminal act and the order of restitution. *Wagner*, 484 N.W.2d at 216.

We find the State has met its burden. The record reflects Anthony mentally and physically abused Amy throughout their relationship. The traumatic circumstances of the burglary effectively caused Amy to suffer a nervous breakdown and contributed to her post-traumatic stress disorder and eventual panic attacks. Conduct of a party is a proximate cause of damage when it is a substantial factor in producing damage and damage would not have occurred except for the conduct. *See City of Cedar rapids v. Municipal Fire and Police Retirement Sys. of Iowa*, 526 N.W.2d 284, 288 (Iowa 1995).

It logically follows that Anthony's conduct contributed substantially to Amy's mental health and well-being, and he should accordingly be held responsible for the expenses incurred in her treatment therefor. Iowa Code section 910.1(2) includes

"expenses incurred for psychiatric or psychological services or counseling . . . which became necessary as a direct result of the criminal activity." *Id.*

Although Anthony faulted Exhibits 1 and 2 at the hearing for not showing a relationship between the expenses incurred and the crime committed, both exhibits were admitted into evidence without objection. Exhibit 1, a letter from Stephen Switzer, investigator for the Crime Victim Assistance Program, contained this comment: "Each of the paid expenses were verified by medical records, statements, insurance benefits explanations, and conversations with providers and Ms. Torno." The court then found the State had met its burden of a preponderance of the evidence by ruling it was "more convinced than not that the claim made is causally related to the conduct of Tony [Anthony] in the commission of the crime."

Having carefully reviewed the record we are unable to find the district court erred. We accordingly affirm the district court's award of restitution.

AFFIRMED.