

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

District Court File: 62-CR-21-6868

Judge Leonardo Castro

State of Minnesota,

Plaintiff,

**ORDER DENYING REQUEST
FOR RESTITUTION**

v.

Brian Harry Kjellberg,

Defendant.

The above-entitled matter came before the Honorable Leonardo Castro, Judge of District Court, Ramsey County on October 3, 2023. The victim’s mother, Tabatha Lewis, (“Mother”), filed an Affidavit of Restitution seeking restitution pursuant to Minn. Stat. §611A.04 in the amount of \$25,620.00. No appearances were made in connection to this request.

Based upon all submissions, files, records, and proceedings herein, this Court makes the following:

PROCEDURAL HISTORY

On or about December 2, 2021, Brian Kjellberg (“Defendant”) was charged with one count of felony Second Degree Murder Without Intent While Committing a Felony in violation of Minn. Stat. § 609. 19, subd. 2(1). On March 30, 2022, Defendant entered a not guilty plea. A jury trial was held on March 27, 2023. On March 30, 2023, the jury returned a verdict and found the Defendant guilty. The Court accepted and recorded the verdict and matter was set for sentencing on May 31, 2023.

On May 15, 2023, this Court received an Affidavit for Restitution from the Minnesota Crime Victims Reparations Board (“MCVRB”). *See* Affidavit for Restitution, (MCVRB), filed confidentially on May 15, 2023, *Index # 78*. The request was prepared by MCVRB, Restitution Manager, Danielle Kitto. *Id.* The losses outlined were a direct result of this offense and were listed as funeral expenses and lost wages. *Id.* MCVRB listed \$7,500.00 as associated with funeral expenses for Brooks Funeral Home and \$748.00 was listed for loss of wages for Tabatha Lewis. *Id.* The total amount requested was \$8,248.00. *Id.* At sentencing on May 31, 2023, this Court issued a Restitution Order requiring the Defendant to pay MCVRB the amount of \$8,248.00. *See* Restitution Order, *Index # 96*. The defense did not object the restitution amount.

On October 3, 2023, the Mother filed a subsequent request for restitution. *See* Affidavit for Restitution, *Restitution Victim (TL)*, filed on October 3, 2023, *Index # 126*. The Mother now seeks restitution in the amount of \$25,620.00 for:

- (1) \$14,000.00 requested for the loss of a 2014 Chevy Suburban because she was not able to make payments after the death of her son;
- (2) \$9,100.00 requested for the loss of her apartment and hotels and Airbnb expenses because she could not pay her rent as a result of the death of her son;
- (3) \$2,400.00 requested due to use of storage units in Minnesota and Georgia; and
- (4) \$120.00 requested for Lyft rides. *Id.* at 2-3.

No other information was provided to this Court about the reasons for this request.

CONCLUSIONS OF LAW

Under Minnesota law, victims of crimes are permitted to request restitution from a defendant if the defendant is convicted. *See* Minn. Stat. § 611A.04, subd. 1; *see also State v. Palubicki*, 727 N.W.2d 662 (Minn. 2007). When the crime victim is deceased, the victims surviving spouse or next of kin e.g., mother, may receive restitution. Minn. Stat. § 611A.01(b)

(the term victim includes the family members of a deceased person). The primary purpose of the statute is to restore crime victims to the same financial position they were in before the crime. *State v. Palubicki*, 727 N.W.2d 662 (Minn. 2007 (citing *State v. Pflapsen*, 590 N.W.2d 759, 768 (Minn. 1999))); *see also State v. Terpstra*, 546 N.W.2d 280, 283 (Minn. 1996); *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984). The restitution statute's broad language gives the district court significant discretion to award restitution for a victim's expenses. *Id.* (citing *State v. Tenerelli*, 598 N.W.2d 668, 671-72 (Minn. 1999)).

The statute requires, "if restitution is in the form of money or property," the information must include an itemization and description of the loss and *reasons justifying the amounts claimed*. *Hughes v. State*, 815 N.W.2d 602, 605 (Minn. 2012) (emphasis added). Additionally, a loss claimed as an item of restitution by a crime victim *must have some factual relationship to the crime committed*—a compensable loss must be "directly caused by the conduct for which the defendant was convicted." *State v. Latimer*, 604 N.W.2d 103, 105 (Minn. App. 1999) (emphasis added) (quotation omitted); *see State v. Olson*, 381 N.W.2d 899, 901 (Minn. App. 1986) (holding that restitution is proper for "victim's losses [that] are directly caused by appellant's conduct for which he was convicted").

In this case, this Court previously ordered a restitution totaling \$8,248.00. This Court found that the reasons for the first restitution request were reasonable and were directly caused by Defendant's conduct. Restitution requests for lost wages and funeral expenses have been found to be directly related to the criminal conduct committed by a defendant and were not outside the scope of the district court's discretion to order the defendant to pay restitution. *See Palubicki*, 727 N.W.2d at 666.

Based on the information provided, the loss of the Suburban vehicle, loss of the apartment, use of hotels and the use of storage units and Lyft rides are not directly caused by Defendant's conduct. Moreover, the restitution statute requires the victim to "include an

itemization and description of the loss and reasons justifying the amounts claimed” when seeking restitution in the form of money. Minn. Stat. § 611A.04, subd. 1(a); *see also Hughes*, 815 N.W.2d at 605. The Mother stated in her affidavit that the loss of the Suburban was due to not being able to make payments on the vehicle after the death of her son and had lost her apartment and “had to move into a [] hotel from time to time after lo[]sing [the victim].” *See Affidavit for Restitution*, Index # 126, at 2. The Mother did not provide any specific information to this Court as to why she was not able to keep her apartment or her Suburban, or why she needed to rent a hotel room or use Lyft for transportation, or how the utilization of storage units in Minnesota and Georgia are tied to Defendant’s conduct. Additionally, the victims were given an opportunity to submit restitution claims prior to sentencing. Also, there was no request at sentencing to keep restitution open pending additional claims. Any loss incurred as result of the Defendant’s conduct would have been known prior to sentencing. Therefore, the restitution request is denied.

ORDER

1. The request for restitution filed by Tabatha Lewis on October 3, 2023, is **DENIED**, in its entirety.

Dated: October 11, 2023

BY THE COURT:

Leonardo Castro
Chief Judge
Second Judicial District