IN THE SUPREME COURT OF IOWA
Supreme Court No. 18–1763

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDDIE DONOVAN DELONG,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR CHEROKEE COUNTY
THE HONORABLE DAVID A. LESTER, JUDGE

APPELLEE'S BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. DeLong was convicted of drugging M.G. and sexually abusing her. M.G. went to the hospital and suffered from profound changes to her personality. As part of his restitution obligations, DeLong was ordered to reimburse the Crime Victim Compensation Program for expenditures that providers and CVAD employees found were directly related to DeLong's crime. The district court found the CVAD employee testimony about those procedures was credible, even though the underlying medical records were confidential. Was the evidence sufficient to find a causal connection between DeLong's crime and M.G.'s treatments/services that treatment/service providers and CVAD employees identified as being directly related to the crime?

Authorities

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Cashen, 789 N.W.2d 400 (Iowa 2010)
State v. Edouard, 854 N.W.2d 421 (Iowa 2014)
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Iowa Code § 22.7(2)
Iowa Code § 915.35(1)
Iowa Code § 915.84(5)
Iowa Code § 915.90(1)

ROUTING STATEMENT

The State agrees with DeLong's routing statement. *See* Def's Br. at 6. This case involves application of established legal principles. Therefore, transfer to the Iowa Court of Appeals is appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a restitution order, separate from the criminal conviction. Eddie DeLong was convicted of third-degree sexual abuse, a Class C felony with a habitual offender enhancement, in violation of Iowa Code sections 709.1, 709.4, and 903B.1 (2016), and supplying alcohol to a minor, a serious misdemeanor, in violation of Iowa Code section 123.47. DeLong's convictions were affirmed on direct appeal. *See State v. DeLong*, No. 18–0588, 2019 WL 2144638 (Iowa Ct. App. May 15, 2019).

Separately, DeLong challenged the amount of restitution that was claimed by the Crime Victim's Assistance Program, in amounts matching payments that CVAP made to DeLong's victim. A hearing was held, and a CVAP employee testified that CVAP reviewed records that were confidential and determined that these specific payments were for treatments that were a direct result of the DeLong's crime.

However, because the underlying records were still confidential, they could not be offered into evidence to establish the causal relationship between DeLong's crime and the victim's need for treatment services. The district court ruled that, even without those records, testimony from the CVAD employee still established that CVAD's procedures were "sufficiently reliable to ensure that the amounts being requested [were] causally related to the crimes committed by [DeLong]." *See* Restitution Order (9/12/18) at 5–6; App. 24–25.

DeLong appeals from that ruling. His sole argument is that, without reviewing those confidential records for itself, the court cannot find a causal connection between those payments by CVAD and the crime he committed, and it could not order restitution that would reimburse CVAD for those expenditures.

Course of Proceedings

The State generally accepts DeLong's description of the relevant course of proceedings. *See* Iowa R. App. P. 6.903(3); Def's Br. at 6–7.

Statement of Facts

M.G. spent the night at DeLong's house on June 30, 2016. M.G. was friends with DeLong's daughter. During that sleepover, DeLong offered M.G. a Straw-Ber-Rita to taste and asked her if she liked it.

See TrialTr.V2 33:10–37:6. M.G. said that she did. DeLong left the room, and returned later with "the drink in a tall blue glass"—but it looked like more liquid than could have been contained in the can of Straw-Ber-Rita that had she sampled earlier, and it tasted "[s]lightly different" and "a little watered-down." *See* TrialTr.V2 37:7–38:24. Still, M.G. drank it all, because she liked it. *See* TrialTr.V2 38:25–40:2. It made her feel "[f]uzzy" and she "couldn't think straight," and she "had a stomachache." *See* TrialTr.V2 40:3–14. M.G. spoke to her mother on the phone, but could not remember what she said. *See* TrialTr.V2 40:15–41:5. Later in the evening, as she lay on the couch, M.G. was conscious as DeLong's sexual abuse began. M.G. was aware that DeLong was squeezing her breasts, rubbing her vagina, and pulling down her pants—but she "couldn't" say anything. *See* TrialTr.V2 42:20–45:15; TrialTr.V2 48:21–25. M.G. made eye contact with DeLong, and he looked "shocked, like he wasn't expecting it." *See* TrialTr.V2 45:18–23. Then, M.G. "fell asleep." TrialTr.V2 45:24–46:2.

M.G. woke up the next day, at "[a]lmost noon," with "[v]omit on [her] left shoulder" that seemed like her own. *See* TrialTr.V2 46:1–16. Her pants were on backwards, there was blood in her underwear, and her vagina was sore to the point where wiping hurt. *See* TrialTr.V2

46:17–48:8. And she "still had a headache and a stomachache." *See* TrialTr.V2 48:9–12. Throughout the day, she kept feeling "[s]ick." *See* TrialTr.V2 48:13–20. And she did not yet remember what happened just before she lost consciousness—that memory resurfaced later on. *See* TrialTr.V2 49:3–9; TrialTr.V2 51:5–13. M.G.'s mother testified about M.G.'s condition on the day after the sleepover, at 4:30 p.m.:

> I saw her laying in my bed, pale, moaning, telling me that she didn't feel right, she had been throwing up and she had been doing nothing but throwing up and sleeping all day.

See TrialTr.V1 48:9–49:16. After the sleepover, M.G. was asleep for the better part of "two and a half days." *See* TrialTr.V1 60:15–61:10.

M.G.'s condition worsened before it improved. *See* TrialTr.V1 60:15–61:1; TrialTr.V2 57:22–59:7. On July 6, 2016, M.G.'s parents rushed M.G. to the hospital because she was "very, very sick."

> When we got home, I found [M.G.] laying on the couch, just burning up, sweating, burning up. I then looked at my husband, and I said, "We have to go. We have to take her up to the ER. She is just burning up." She was so bad she couldn't even get dressed on her own. I had to help her get dressed.

See TrialTr.V1 55:16–56:10. Testing revealed that M.G. had developed "a very bad bladder infection and a very bad kidney infection," which meant "they had to pump her full of a lot of IV fluids." *See* TrialTr.V1 55:16–58:21; *see also* TrialTr.V2 10:4–11.

After the sleepover, M.G.'s behavior had changed profoundly—instead of being "very outgoing" and "very excited" like she had been before the sleepover, M.G. was "just very sad, very distant, wouldn't talk, wouldn't eat," and she had profound difficulty with sleep. *See* TrialTr.V1 50:4–52:18; *accord* TrialTr.V2 49:10–21.

DeLong was found guilty as charged. At DeLong's sentencing, on March 30, 2018, M.G.'s mother said this in her victim impact statement: "The laceration on [M.G.]'s vagina has healed; however, you have put a permanent scar on her life." *See* Sent.Tr. 6:8–7:8. The sentencing order assessed restitution, including reimbursements to the Crime Victim Assistance Program "to be determined by counsel or upon hearing." *See* Judgment & Sentence (3/30/18); App. 9.

After sentencing, the parties agreed that a restitution hearing needed to be held to set the amount for restitution. *See* Motion for Restitution Hearing (4/19/18); App. 19. At that hearing, the State called Ruth Walker, who was a restitution subrogation coordinator in the Crime Victim Assistance Division, which had made payments to reimburse M.G.'s family for treatments and services that they found were "directly related to the crime." *See* RestitutionTr. 3:17–5:1. Walker testified about how that determination is made:

> Once we receive an application, they indicate on the application what benefits they're seeking, and we request those billings and medical records from those providers. And once we receive the information, the compensation specialist who is assigned the claim will review all the information. And if it's determined that it's crime related and we can pay for it, then a payment will be requested on that. We pay 50 percent of medical expenses, and then the providers write the remaining 50 percent off. And then that file goes to another compensation specialist who reviews their work at quality control, and then the payment is requested and sent out.

RestitutionTr. 5:2–17. Walker confirmed that payments in this case were made by following that procedure. *See* RestitutionTr. 5:18–21. Walker explained that Exhibits 15 and 16 showed the amounts that CVAD paid, but not the reasons for those payments—the underlying patient records remained confidential. *See* RestitutionTr. 5:22–11:3.

DeLong did not move to compel disclosure of those records or seek *in camera* review of those records. DeLong focused on charges for "emergency medical transport"—M.G. was taken to the hospital by ambulance on January 1, 2017, which was six months after the crime. *See* RestitutionTr. 11:4–25. This exchange with Walker ensued:

> **DEFENSE**: Can you help me make the connection here how the emergency treatment was required in that instance?
>
> **WALKER**: Yeah, absolutely. This is a sexual assault victim. So her injuries are not just going to be from that one particular day. This could be going on for years, treatment she may need because of that crime.

> **DEFENSE**: But this was an actual emergency service vehicle picking her up at her home and taking her to the hospital, correct?
>
> **WALKER**: Yes, that's correct.
>
> **DEFENSE**: So, you know, I understand that there may be issues with therapy, things of that nature, but what was the actual emergency that led to this bill. And how does that relate to the crime in question when it was six months later?
>
> **WALKER**: The treatment that she's receiving is related to the crime. And in this incident, they had to call the ambulance to take her to the hospital because of her condition that she's having.

RestitutionTr. 12:1–21. DeLong also attempted to disambiguate the medical treatment from mental health services, but Walked stated that they were interconnected—M.G. needed mental health services, "but she also had a medical condition." *See* RestitutionTr. 13:7–15:13. Most of the non-confidential records only contained billing amounts. But a record from August 8, 2017 included this diagnosis: "PTSD—symptoms related to sexual assault." State's Ex. 16, at 21; CApp. 63.

DeLong argued that it was "hard to believe in a case where there wasn't any physical bodily injury that we have medical bills extending all the way out until January of 2017." *See* RestitutionTr. 18:8–17. DeLong also argued that he had "a due process right to challenge that causal connection" between the crime and the amounts of restitution. *See* RestitutionTr. 17:13–18:7; RestitutionTr. 20:16–23.

The district court issued a written ruling that considered and rejected DeLong's challenge, based on Walker's testimony:

> Walker first explained in general terms how the Program goes about figuring restitution in any criminal case involving a victim. She then explained in more detail that in the present case, the restitution being sought as itemized in Exhibit 15 was for payments made by the Program in three general categories: (1) crime-related travel, which was for mileage reimbursement at the state rate of 39 cents per mile . . . ; (2) medical care for Defendant DeLong's minor victim, M.G., arising from the sexual assault; and (3) victim counseling for M.G.
>
> Walker then went on to explain that each time the program received a bill with a payment request, a claims specialist for the program would review the bills, and obtain medical records relating to any payments for treatment or counseling. Those records would then be reviewed; and then payment would either be approved or denied. In each incident at least two claims specialists reviewed the documents before payments were approved or denied. . . .
>
> On cross-examination, Walker acknowledged that the Program does not release medical records to the court in support of any restitution requests because such records are deemed confidential under Iowa Code Chapter 22, and are not subject to release pursuant to Iowa Code Section 915.90. When questioned specifically about the payment to the Remsen Ambulance Service for ambulance transportation of M.G., Walker explained an ambulance had to be called to take M.G. to the hospital for treatment the Program determined was related to the sexual assault. Walker further confirmed that the payments to Floyd Valley Hospital were for medical treatment concerning a medical condition that Walker couldn't disclose to the court and counsel, but was determined by the Program to be related to the sexual assault.
>
> [. . .]

> As [DeLong's counsel] argued, this court's ability to determine whether there is a causal connection between Defendant DeLong's criminal activity in this case and the restitution amounts being sought is certainly limited by the fact that the Program is unable to provide the court with medical records in support of the amounts requested due to the prohibition contained in Iowa Code Section 915.90. Given this statutory prohibition, it appears that this court's review must logically be limited to a determination of whether or not the procedures used by the Program are sufficiently reliable to ensure that the amounts being requested are causally related to the crimes committed by Defendant DeLong.
>
> In the present case, the testimony of Walker not only provided the court with the general framework used by the Program in determining whether compensation should be paid, but further established that procedure was followed in this case. Moreover, Walker provided the court with what additional evidence she could, without violating the confidentiality provisions of Iowa Code Section 915.90 and Iowa Code Chapter 22, to explain, at least in general terms, why certain bills for services itemized in Exhibit 16 were necessary and were determined to be related to Defendant DeLong's criminal conduct.
>
> Accordingly, the court now concludes that the state has met its burden of establishing a causal connection between the restitution amounts being sought by the Program, and the criminal conduct Defendant DeLong was convicted of in this case.

Restitution Order (9/12/18) at 3–6; App. 22–25. As such, the court assessed an obligation to reimburse CVAD for $2,740.95 in their reported expenditures as part of DeLong's restitution. *See id.*; *accord* Amended Sentencing Order (6/28/19).

Additional facts will be discussed when relevant.

ARGUMENT

I. These payments were causally connected to the crime.

Preservation of Error

DeLong made the same argument about the sufficiency of the record to support a finding of a causal relationship between the crime and these payments below. *See* RestitutionTr. 17:13–20:23. The court considered and rejected it. *See* Restitution Order (9/12/18) at 3–6; App. 22–25. Therefore, error was preserved for the present challenge. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

Standard of Review

Restitution is a creature of statute, so restitution orders are reviewed for errors at law. *See State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010). "When reviewing a restitution order, we determine whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law." *See id.* (quoting *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004)).

Merits

DeLong argues "there was not sufficient evidence to connect the amount of restitution claimed by [CVAD] and the crime for which [he] was convicted." *See* Def's Br. at 10–14. But Walker's testimony enabled the court to find that causal connection on this record.

"When immediate or short-term medical services or mental health services are provided to a victim under section 915.35," which includes a minor who has been sexually abused, "the department of human services shall file the claim for compensation." *See* Iowa Code § 915.84(5); *cf.* Iowa Code § 915.35(1). Although the department has a right to inspect and reproduce any information about the victim or the crime, that material is "to be used only in the administration and enforcement of the crime victim compensation program," and those portions of those records that are confidential under section 22.7 still need to "remain confidential." *See* Iowa Code § 915.90(1). That would include "[h]ospital records" and "medical records" of a victim-patient, along with "confidential communications between a crime victim and the victim's counselor." *See* Iowa Code § 22.7(2). But even though the victim's medical records and mental health records are confidential, the Iowa Supreme Court has held that courts must make "a judicial determination of the 'causal connection' between the amounts paid to the victim by the [Crime Victim Compensation Program] and the defendant's criminal activity" before ordering reimbursement for those CVCP payments as restitution. *See Jenkins*, 788 N.W.2d at 643. This requires some proof of that causal connection by other means.

DeLong overstates the problem when he points to five charges and argues: "There is nothing in the record to show that this medical expense was related to the crime alleged to have been committed by the defendant." *See* Def's Br. at 12, 12, 13, 13, 13. Such a connection can be inferred at the intersection of three sets of facts in the record.

First, proof of the causal connection starts with the facts that establish the nature of the crime and the means of committing it. M.G. was drugged and sexually abused. In the aftermath of the crime, she suffered physical symptoms that seemed related to the means by which DeLong incapacitated her. *See* TrialTr.V1 48:9–58:21; *see also* TrialTr.V2 10:4–11; TrialTr.V2 48:9–20. And the fact of sexual abuse weighed heavily on her. TrialTr.V1 50:4–52:18; TrialTr.V2 49:10–21; Sent.Tr. 6:8–7:8; *cf.* TrialTr.V3 32:4–8 (arguing, in closing, that M.G. "was raw emotionally when she testified"). If this were a simple theft, it would be difficult to infer causation that would connect the crime with subsequent medical treatment and mental health services—but given the underlying facts of this case, that inference arises naturally. The evidence in the trial record established unmistakable connections between DeLong's crime and the need for M.G. to seek some amount of medical treatment and mental health services.

Granted, the need for *some* treatment and services does not necessarily prove a causal connection to *these* specific expenditures. Fortunately, a second set of facts was presented at the hearing on the amount of restitution: the payment records, and Walker's testimony about the procedures that were followed to approve these payments. *See* RestitutionTr. 5:2–21. Walked confirmed that, from her review of the records, M.G. "had a medical condition" that was a direct result of this crime and necessitated treatment and services that she received. *See* RestitutionTr. 13:7–15:13. And when Walker was asked about the emergency transport to the hospital on January 1, 2017, she affirmed that "[t]he treatment that [M.G.]'s receiving is related to the crime." *See* RestitutionTr. 11:4–12:21. Those payments would not have been made unless two different specialists in CVAD had both found that "it's crime related and we can pay for it." *See* RestitutionTr. 4:11–5:21; RestitutionTr. 10:8–18; *cf.* State's Ex. 16, at 27; CApp. 69 (noting that CVAD had refused to pay for services that were "not related to crime"). Walker's testimony "established that procedure was followed," which allowed the court to infer that no payments for services were approved without a causal connection between the crime and the condition that required treatment. *See* Restitution Order (9/17/18) at 6; App. 25.

Third, and finally, the single piece of data on M.G.'s condition in August 2017 strengthened inferences of a causal connection between DeLong's crime and M.G.'s ongoing need for services and treatment: M.G. had "PTSD—symptoms related to sexual assault." State's Ex. 16, at 21; CApp. 63. This confirmed that M.G.'s need for services *arose from the crime* and continued for at least twelve months after DeLong had abused her—which solidifies the inference that CVAD did its job and ensured that it did not pay for treatments or services that were unconnected to the condition that was created by DeLong's crime.

The district court found Walker credible and was satisfied that she had "not only provided the court with the general framework used by the Program in determining whether compensation should be paid, but further established that procedure was followed in this case." *See* Restitution Order (9/12/18) at 5–6; App. 24–25. Additionally, the court reviewed forms where treatment and service providers—not CVAD—indicated that the "[s]ervices rendered were a direct result of crime." *See* State's Ex. 16, at 9, 21, 24; CApp. 51, 63, 66; *cf.* State's Ex. 16, at 4; CApp. 46 (form marked with: "Per Ruth [Walker], CVC should pay"). This means that the portion of the Iowa Supreme Court's decision in *State v. Edouard* that deals with restitution is directly on point:

. . . Edouard claims the State's witness had no firsthand knowledge that the treatment received by the victims could be linked to his criminal conduct. He maintains a causal connection cannot be shown simply by calling a witness who brings in paperwork completed by others.

The State's witness testified to the manner in which requests for compensation are approved by the crime victim assistance division:

> In every claim that is filed with our office, the victim signs a release of information, and they put on the release who the providers are that they want assistance with for payment. And also on the application there is a place to mark what benefits they're seeking. So based on that information, we send out . . . request forms to those providers and they complete them. And we also ask for itemized statements and the medical records, and then the compensation specialist reviews that and determines whether or not it is crime related.
>
> [. . .]

She further testified that each mental health or medical provider also fills out a verification form regarding the treatments that indicates whether the service was related to the crime.

In this case, the providers in question had attested in writing that all the treatments were related to the crime. Each exhibit contained a form signed by the treatment provider that verified the treatments in question were "provided as a direct result of the crime." The coordinator also confirmed this in her testimony. . . .

[. . .]

We uphold as supported by substantial evidence the district court's conclusion that the mental health care costs charged to Edouard were incurred "as a direct result" of Edouard's crimes.

State v. Edouard, 854 N.W.2d 421, 450–51 (Iowa 2014), *overruled on other grounds by Alcala v. Mariott Int'l, Inc.*, 880 N.W.2d 699, 708 n.3 (Iowa 2016). This case is controlled by *Edouard*, and the evidence presented here was nearly identical to the type of evidence presented in *Edouard* regarding the need for the mental health services that his victims had sought as a result of Edouard's predatory sexual abuse.

DeLong argues that ordering restitution on this record "denies [him] the ability to challenge that connection" between the crime and the treatment or services rendered. *See* Def's Br. at 14. But DeLong is making an argument about the sufficiency of the evidence to find that causal connection, not an argument challenging denial of a motion for access to M.G.'s confidential records (which he did not make). He had an opportunity to contest the existence of that causal connection, but he could never disprove it because all participants in this process who reviewed M.G.'s confidential records affirmed that these treatments and services were causally related to DeLong's acts of drugging and sexually abusing her. To the extent that DeLong demands the right to cross-examine M.G.'s therapists and counselors to determine whether her need for counseling predated his act of sexual abuse, section 22.7 can legitimately prohibit him from re-victimizing M.G. in that way.

Indeed, just as the Iowa Supreme Court recognized in the context of domestic abuse, there are compelling reasons not to second-guess the legislature's policy judgment on the confidentiality of those records:

> If victims of domestic violence must suffer the embarrassing and debilitating loss of their physician–patient privilege once they become a witness in a criminal domestic-abuse prosecution, a chilling effect will be cast over the reporting of domestic abuse, the disclosure of information to treatment providers by victims, the ability of physicians and psychotherapists to treat psychological disorders arising from domestic abuse, and the willingness of victims to testify against their abusers.

State v. Thompson, 836 N.W.2d 470, 488 (Iowa 2013) (quoting *State v. Cashen*, 789 N.W.2d 400, 416 (Iowa 2010) (Cady, J., dissenting)).

This case is controlled by *Edouard*, and the causal connection is even stronger because an errant reference to M.G.'s diagnosis with "PTSD—symptoms related to sexual assault" was also provided. *See* State's Ex. 16, at 21; CApp. 63; *Edouard*, 854 N.W.2d at 450–51. DeLong cannot show this evidence is legally insufficient to enable an inference that proper review occurred and that payments were made only for treatments and services that were directly and causally related to DeLong's crime of drugging M.G. and sexually abusing her. Thus, his challenge to this restitution order must fail.

CONCLUSION

The State respectfully requests that this Court affirm the court's restitution order and reject DeLong's challenge.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,995** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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