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IN THE SUPREME COURT OF THE UNITED STATES

JESSYCA HOSKINS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

INDEX TO APPENDICES

APPENDIX A	<i>United States v. Hoskins</i> , 876 F.3d 942 (8th Cir. 2017)	1a
APPENDIX B	District Court Order Awarding Restitution	7a
APPENDIX C	Order Denying Petition for Rehearing	12a

APPENDIX A

the district court's grant of judgment on the pleadings in favor of the defendants.



UNITED STATES of America,
Plaintiff–Appellee,

v.

Jessyca HOSKINS, Defendant–
Appellant.

No. 16-3532

United States Court of Appeals,
Eighth Circuit.

Submitted: April 7, 2017

Filed: November 29, 2017

Rehearing and Rehearing En Banc
Denied January 19, 2018

Background: Defendant pleaded guilty in the United States District Court for the Western District of Arkansas, Timothy L. Brooks, J., to distributing child pornography, and, 2016 WL 4408828, she was ordered to pay her victim \$7,500 in restitution. Defendant appealed.

Holdings: The Court of Appeals, Gerrard, District Judge, sitting by designation, held that:

- (1) district court's conservative \$40,000 estimate of child pornography victim's future medical expenses when determining amount of restitution was not clearly erroneous, and
- (2) defendant proximately caused at least some of the victim's expenses for past and future medical and psychological treatment, as required to support district court's restitution order.

Affirmed.

1. Criminal Law ⇌1156.9, 1158.34

Court of Appeals reviews the district court's decision to award restitution for abuse of discretion, but any fact findings as to the amount are reviewed for clear error.

2. Sentencing and Punishment ⇌2187

The government bears the burden of proving the amount of restitution based on a preponderance of the evidence.

3. Sentencing and Punishment ⇌2168

District court's conservative \$40,000 estimate of child pornography victim's future medical expenses when determining amount of restitution owed by defendant who filmed the victim being raped and distributed that video, based on the testimony of the victim's mother and the documented expenses already incurred, was not clearly erroneous; defendant did not take issue with court's factual finding that the victim was likely to incur future medical expenses in some amount. 18 U.S.C.A. §§ 2259(b)(2), 3664(e).

4. Sentencing and Punishment ⇌2151

Statute requiring mandatory restitution for sexual exploitation and other abuse of children allows restitutionary damages for the future costs of therapy. 18 U.S.C.A. § 2259.

5. Sentencing and Punishment ⇌2151

Although predicting future psychological damages is notoriously difficult when determining mandatory restitution for sexual exploitation and other abuse of children, the district court is only required to make a reasonable estimate, not establish the victim's future treatment costs with certainty. 18 U.S.C.A. § 2259.

6. Sentencing and Punishment ⇌2150, 2151

Defendant, who pleaded guilty to distributing child pornography for filming 14-

year old victim being raped and distributing that video, proximately caused at least some of the victim's expenses for past and future medical and psychological treatment, as required to support district court's order that she pay \$7,000 in restitution to the victim; distribution of the victim's images began with and was attributable to defendant, and victim's mother described the victim's ongoing trauma as being premised in part on the constant fear that the video of her rape had been, or could be, available on the internet. 18 U.S.C.A. §§ 2259, 3664(e).

7. Sentencing and Punishment ¶2142

Restitution is proper, under statute providing for mandatory restitution for sexual exploitation and other abuse of children, to the extent that the offense proximately caused a victim's losses. 18 U.S.C.A. § 2259.

8. Sentencing and Punishment ¶2142, 2160

When determining the amount of restitution where a number of causes contributed to the victim's losses, under statute providing for mandatory restitution for sexual exploitation and other abuse of children, the district 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; that cannot be a precise mathematical inquiry but, rather, involves the use of discretion and sound judgment. 18 U.S.C.A. § 2259.

Appeal from United States District Court for the Western District of Arkansas—Fayetteville

1. The Honorable John M. Gerrard, United States District Judge for the District of Ne-

bris, sitting by designation.
Denis Dean, Aaron L. Jennen, Assistant U.S. Attorney, Dustin S. Roberts, Assistant U.S. Attorney, U.S. Attorney's Office, Western District of Arkansas, Fort Smith, AR, for Plaintiff–Appellee.

Christopher Aaron Holt, John B. Schisler, Assistant Federal Public Defender, U.S. Medical Center for Federal Prisoners, Fayetteville, AR, Jessyca Hoskins, U.S. Medical Center for Federal Prisoners, Fort Worth, TX, for Defendant–Appellant.

Before COLLOTON and BENTON, Circuit Judges, and GERRARD,¹ District Judge.

GERRARD, District Judge.

Jessyca Hoskins was convicted of distributing a visual depiction of a minor engaging in sexually explicit conduct and ordered to pay restitution of \$7,500. She argues that the evidence was insufficient to establish either that the victim's losses were proximately caused by the offense, or the amount of the loss. We affirm.

I.

The victim in this case was 14 years old when Hoskins videorecorded her sexual assault. The victim was supposed to be spending a night with a friend, but instead the two girls went to Hoskins' apartment. They stayed there for most of the weekend drinking, smoking marijuana, and going out to nightclubs.

It was there that the victim was introduced to Jason Henry, also known as “All Star,” who had been invited over to meet the victim with the idea that he could become the victim's pimp. Henry pimped her to LaQuentin Jones, and Hoskins videorecorded Jones and the victim having

braska, sitting by designation.

sex while others watched. While it was happening, the victim said “no, no” or “stop, stop,” and held her hands up in the direction of the camera. Hoskins sent the video to several people.

Upon learning some of what had happened, the victim’s mother took her to a hospital, and the hospital called Fayetteville police. Police interviewed one of the people to whom the video had been sent. At least one copy of the video was taken from the phone of a schoolmate of the victim.

Henry was convicted in state court of prostitution and sexual assault. Jones was also convicted of sexual assault in state court. And Hoskins was charged in federal court with, among other things, knowing distribution of a visual depiction of a minor engaged in sexually explicit conduct, in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1). Hoskins pled guilty to that charge.

The victim’s mother testified at sentencing about the effect of the offense on the victim, and in particular the effect of the videorecording and its distribution. She said that the victim now dislikes being videorecorded, and has nightmares about it. She asked the court to “imagine being 14 and going to school and the kids at your school have seen a video of you being surrounded by other people and being . . . while someone cheers it on?” (Ellipsis in original.) “[I]t would be naive of us to believe,” she said, “even if it is supposition, that this video went one place and stopped.”

Hoskins was sentenced to 72 months’ imprisonment and a \$2,400 fine, and the district court set another hearing on the matter of restitution. A victim impact statement completed by the victim’s moth-

er described \$38,700 in crime-related costs, for a variety of expenses including private therapy and out-of-state travel related to mental health treatment. Invoices and a ledger were provided to substantiate some of those amounts. And the victim impact statement specifically sought \$10,000 for future medical expenses.

The district court² ordered Hoskins to pay \$7,500 in restitution. The court analogized the situation to that presented in *Paroline v. United States*, in which the Supreme Court addressed how to assess the proximate cause of a victim’s losses from the possession of child pornography. — U.S. —, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014). The court reasoned that *Paroline* was “highly instructive” because this case, like *Paroline*, involves an injury caused by Hoskins’ distribution of images of the victim’s rape.

The district court began by estimating the victim’s full damages, as a “rough guidepost” for determining an amount appropriate to Hoskins’ offense. The court found that the victim had incurred a total of \$11,895 in documented losses, based on the invoices and ledger provided by the victim’s mother. The court further credited \$3,000 in incurred but undocumented damages, explaining that it was intended to be a “reasonable but low estimate,” given the costs normally associated with travel, emergency room care, and psychiatric or psychological treatment.

The court also found, based on the victim impact statement and in-court testimony of the victim’s mother, that the victim was likely to incur future medical expenses. The court estimated the victim’s future medical expenses based on the records of medical expenses already incurred,

2. The Honorable Timothy L. Brooks, United States District Judge for the Western District

of Arkansas.

concluding that she would incur at least \$40,000 in future psychological and related expenses. The court characterized that as “an extremely low estimate. Projecting 15 years of outpatient therapy at a modest average of \$50 per week, for example, is \$39,000 alone. This does not include any inpatient care, medications, or other medical expenses that [the victim] may require.” This brought the court’s determination of the victim’s total damages to \$54,895.

Then, the district court turned to a determination of what amount of those damages was proximately caused by Hoskins. The court acknowledged that most of Hoskins’ damages were attributable to Henry, Jones, and others—but, the court found, “Hoskins’ actions proximately caused a significant part of those damages too.” Hoskins filmed the victim being raped, and distributed that video to another minor. And the victim’s mother, the court noted, described the victim’s ongoing trauma as being premised in part on the constant fear that the video of her rape has been, or could be, available on the Internet.

So, the district court concluded, a restitution award of \$7,500 was appropriate in this case. Hoskins timely appealed from the court’s order awarding restitution. *See Manrique v. United States*, — U.S. —, 137 S.Ct. 1266, 1272–73, 197 L.Ed.2d 599 (2017).

II.

[1, 2] We review the district court’s decision to award restitution for abuse of discretion, but any fact findings as to the amount are reviewed for clear error. *Unit-*

ed States v. Carpenter, 841 F.3d 1057, 1060 (8th Cir. 2016). The government bears the burden of proving the amount of restitution based on a preponderance of the evidence. *Id.*

Hoskins’ argument is twofold. She contends that the district court erred in awarding restitution because the evidence did not provide a basis for the court to ascertain the amount of the loss with reasonable certainty. And, she argues, the court erred in finding that Hoskins’ conduct proximately caused the victim’s injury.

A.

[3] Hoskins’ first argument is that the government failed to meet its burden to prove the loss sustained by the victim by the preponderance of the evidence. *See* 18 U.S.C. 3664(e); 18 U.S.C. § 2259(b)(2) (citing § 3664). Specifically, Hoskins takes issue with the sufficiency of the evidence with respect to future medical expenses. She asserts that “[t]he record in this case contains no reliable expert medical testimony as to the amount of future psychological treatment that will be required by [the victim].”³ “There was,” Hoskins argues, “no evidence presented that would allow the court to conclude that [the victim] would require 15 years of outpatient therapy (or a longer term of therapy, or a shorter term, or a different type of treatment).” So, Hoskins concludes, “[t]he court’s \$40,000 estimate was essentially arbitrary, and the total amount of [the victim’s] loss was thus not ascertained with reasonable certainty.”

3. The district court was provided with a letter from a trauma and recovery specialist, who opined that the best course of treatment in “traumatic cases involving sex trafficking” is initially a residential facility, followed by an outpatient treatment program and then a

mentoring or support program, and advised that the average cost of residential treatment is \$2,000 per week and outpatient treatment is \$1,000 per week. But the court, for a number of reasons, did not find that evidence credible, and did not rely on it.

[4,5] But as a general matter, it is well-established that mandatory restitution pursuant to § 2259 allows restitutionary damages for the future costs of therapy. *United States v. Funke*, 846 F.3d 998, 1001 (8th Cir. 2017). And “[a]lthough predicting future psychological damages is notoriously difficult, the district court was only required to make a reasonable estimate, not establish the victim’s future treatment costs with certainty.” *United States v. Palmer*, 643 F.3d 1060, 1067 (8th Cir. 2011).

Hoskins points out that in *Palmer*, the district court benefitted from the opinion of a child psychologist who opined about the future medical expenses to be expected for the victim in that case, despite not having interviewed her. *See id.* at 1063–64. But in the context of already-incurred expenses, we have held that the district court was entitled to rely on the testimony of the victim and her mother, and “a basic knowledge of medical expenses,” in determining the amount of restitution to be awarded. *United States v. Emmert*, 825 F.3d 906, 911 (8th Cir. 2016). There is no reason that an estimate of future medical expenses cannot be based on similar evidence, so long as the estimate is reasonable. *See Palmer*, 643 F.3d at 1067.

As we recognized in *Palmer*, there is a certain degree of conjecture involved in any estimation of future psychological damages. *See id.* And Hoskins does not take issue with the district court’s factual finding that the victim is likely to incur future medical expenses in some amount. The court’s conservative estimate of those expenses, based on the testimony of the victim’s mother and the documented expenses already incurred, was not clearly erroneous.

B.

[6] Hoskins also contends that her conduct did not proximately cause the loss

suffered by the victim. She argues that the district court erred in relying upon *Paroline*, which she says is inapplicable because it was “intended to assist the district courts in awarding restitution in typical child-pornography possession cases based on loss directly tied to the wide circulation of images among thousands of people.” The instant case, she suggests, should instead have been resolved by a “traditional causal analysis.” But while *Paroline* is not factually on point, the Supreme Court’s reasoning in that case drew on general principles of proximate cause, discussing them in some detail, and it is those principles that are relevant here.

[7] Pursuant to *Paroline*, restitution is proper to the extent that the offense “proximately caused a victim’s losses.” 134 S.Ct. at 1722. The Court explained, however, that “the most difficult aspect of this inquiry concerns the threshold requirement of causation in fact.” *Id.*

But the victim’s costs of treatment and lost income resulting from the trauma of knowing that images of her abuse are being viewed over and over are direct and foreseeable results of child-pornography crimes, including possession, assuming the prerequisite of factual causation is satisfied. The primary problem, then, is the proper standard of causation in fact.

Id. The Court noted that one “traditional way” of proving causation in fact was “but for” causation; in *Paroline*, however, a showing of but-for causation could not be made. *Id.* The Court nonetheless found that § 2259 did not require but-for causation, and that 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.” *Id.* at 1727.

Hoskins is correct that in this case, we do not have the problem presented in *Paroline*, where the victim's losses were caused by ongoing traffic in images but it was impossible to trace a particular amount of those losses to the defendant. *See id.* But that does not make this case more complex—rather, it simplifies this case because to the extent that the victim's losses are caused by traffic in her images, it is possible to trace a particular amount of those losses to Hoskins. It is, in fact, possible to trace *all* such losses to Hoskins, because in this case, a showing of but-for causation can be made. Distribution of the victim's images began with and is attributable to Hoskins.

[8] The real gravamen of Hoskins' argument, though, is that the victim's "past and future medical and psychological treatment was necessary due to the sexual abuse she suffered" and that Hoskins "cannot be ordered to pay restitution for losses resulting from the [victim's] sexual exploitation and assault."⁴ But as set forth above, the evidence here *does* identify aspects of the victim's injuries that are specifically attributable to the distribution of her images. And determining the amount of restitution where a number of causes contributed to the victim's losses was addressed in *Paroline*: the district 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." 134 S.Ct. at 1727–28. That "cannot be a precise mathematical inquiry" but, rather, "involves the use of discretion and sound judgment." *Id.* at 1728.

4. It bears recalling that while Hoskins also participated in the victim's assault, restitution under § 2259 is proper "only to the extent the defendant's *offense* proximately caused a victim's losses." *Paroline*, 134 S.Ct. at 1722 (em-

Furthermore, the Supreme Court expressly rejected the argument that apportionment of liability for a victim's losses is untenable where those losses are arguably indivisible. *Id.* The Court explained that while it might be in some sense a "fiction" to say that a defendant caused a particular amount of losses, it was necessary to "define a causal standard" for § 2259 that "effects the statute's purposes, not to apply tort-law causation concepts in a mechanical way in the criminal restitution context." *Id.* at 1729. District courts, the Supreme Court said,

can only do their best to apply the statute as written in a workable manner, faithful to the competing principles at stake: that victims should be compensated and that defendants should be held to account for the impact of their conduct on those victims, but also that defendants should be made liable for the consequences and gravity of their own conduct, not the conduct of others.

Id. The district court's careful exercise of its discretion in this case was faithful to those principles.

In sum, the evidence before the district court provided a basis to conclude that some of the victim's losses were uniquely caused by Hoskins distributing the video of her assault. The court did not abuse its discretion in deciding to award restitution, nor did it clearly err in assessing the amount of restitution to be awarded.

The district court's restitution award is affirmed.



phasis supplied). So, for purposes of restitution, only losses proximately caused by the offense of conviction—distribution of child pornography—are at issue.

APPENDIX B

2016 WL 4408828

Only the Westlaw citation is currently available.

United States District Court,
W.D. Arkansas, Fayetteville Division.

United States, Plaintiff
v.
Jessyca Hoskins, Defendant.

CASE NO. 5:15-CR-50045

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Signed 08/16/2016

Attorneys and Law Firms

Dustin S. Roberts, U.S. Attorney's Office, Fort Smith,
AR, for Plaintiff.

John B. Schisler, Office of the Federal Public Defender,
Fayetteville, AR, for Defendant.

Opinion

OPINION AND ORDER

TIMOTHY L. BROOKS, UNITED STATES
DISTRICT JUDGE

*1 On September 29, 2015, Jessyca Hoskins pled guilty to Count Two of an Indictment (Doc. 13) charging her with distributing child pornography in violation of 18 U.S.C. §§ 2252(a)(2) and (b)(1). On May 23, 2016, the Court sentenced Hoskins to 72 months imprisonment, five years supervised release, a \$100 special assessment, and a \$2,400 fine. (Doc. 55). At the sentencing hearing, the Court did not determine whether the victim was entitled to restitution, because a week prior it had granted the Government's motion to hold a separate restitution hearing. (Doc. 50). That hearing occurred on August 10, 2016. The Government argued that \$10,000 in restitution would be appropriate, and Hoskins took the position that restitution should not be awarded at all. The Court indicated that it would be awarding restitution, but took the matter under advisement to consider the amount. It now finds that the victim is entitled to \$7,500 in restitution from Hoskins.

I. BACKGROUND

The facts of this case are incredibly upsetting, but a recounting of them is important to appreciating why an award of restitution is appropriate. As set forth in the Final Presentence Investigation Report (Doc. 59), over the weekend of March 20, 2015 to March 22, 2015, Jason Henry a/k/a "Allstar" prostituted a 14-year-old female, referred to herein as Jane Doe. Doe was sexually assaulted multiple times over the course of the weekend, while at Henry's direction she performed sexual activity in exchange for money. Henry later told investigators that he was introduced to Doe by Hoskins. On the night of March 21, 2015, Doe was sexually assaulted by an adult male named LaQuentin Jones at Hoskins' apartment. Hoskins filmed a three-minute-long video of the incident and sent the video to a minor child via Facebook.

The following day, Doe sought treatment for her sexual assaults at the Washington Regional Medical Center. The Fayetteville, Arkansas police were notified, and contacted Hoskins at her apartment. Hoskins admitted to knowing that Jones was over the age of 18, that Doe was under the age of 18, and that she filmed and sent the video to the minor child. She was arrested on May 27, 2015, and charged in this Court on June 5, 2015. (Doc. 1). Both Henry and Jones were charged, convicted, and sentenced in state court.

As a result of the aforementioned events, it is undisputed that Doe and her mother have incurred significant costs related to medical and psychological care, and will continue to incur such costs into the future. These costs included Doe's stay at a since-closed inpatient facility in Colorado, separate counseling in Colorado, and local counseling in Arkansas. *See* Doc. 49-2, pp. 4-6. As of May 11, 2016—roughly one year after the incident—Doe's mother estimated \$28,700 in expenses, with \$10,000 in future projected therapy costs. (Doc. 49-2, p. 1). This estimate included \$20,000 in medical and therapy expenses, \$2,400 in out-of-state travel expenses, \$6,000 in lost wages, and \$300 for two cell phones. *Id.* at 7.

*2 Doe's mother has provided documentation to support some of these expenses. An invoice from a counseling service in Fayetteville, Arkansas shows \$280.00 due for seven counseling sessions occurring over the span of one month. (Doc. 59-2, p. 2). A ledger from St. Paul's Church

in Fayetteville shows that it paid for a total of \$11,895 in therapy costs from July to October of 2015. *Id.* at 3. Invoices from the therapy centers support these charges. Doe's Colorado therapist billed St. Paul's for eight therapy sessions over the span of 25 days in September of 2015, for a total of \$675. *Id.* at 4. The inpatient center in Colorado charged \$2,280 for 19 days in August of 2015, and \$3,240 for 27 days in September of that year. *Id.* at 5-6. With respect to future costs, Doe's mother provided a letter from a Trauma and Recovery Specialist in Colorado, which noted:

In addition to the physical, emotional and psychological wounds left by sex trafficking, the financial cost of treatment is astronomical and often beyond the abilities of victims and their families. The average cost of residential treatment is \$2,000.00 per week; outpatient treatment costs an average of \$1,000.00 per week. This is an estimated cost of over \$100,000.00 per year.

Id. at 1.

II. LEGAL STANDARD

Restitution in cases involving the sexual exploitation and abuse of children is governed by 18 U.S.C. § 2259. Under § 2259, restitution is mandatory. *See* 18 U.S.C. §§ 2259(a) (“[T]he court *shall* order restitution for any offense under this chapter.” (emphasis added)); 2259(b)(4) (A) (“The issuance of a restitution order under this section is mandatory.”). The restitution award, moreover, must be in the “full amount of the victim's¹ losses.” *Id.* at (b) (1). A victim's losses include costs incurred due to “medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys' fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense.” *Id.* at (b)(3). Notably, the Court “may not decline to issue” restitution because of “the economic circumstances of the defendant” or “the fact that the victim has, or is entitled to,

receive compensation for [her] injuries from the proceeds of insurance or any other source.” *Id.* at (4)(B).

Determining the proper amount of a restitution award is more complicated in sexual abuse and exploitation cases involving multiple offenders, some of whom are not defendants before the sentencing court. The prototypical example of this type of case is one in which a defendant possessed a widely circulated video of child pornography. The victim's damages in such cases are caused by potentially thousands of people, including those who produced the video, distributed the video, and possessed the video. The Supreme Court addressed the allocation of restitution in these cases in *Paroline v. United States*, 134 S. Ct. 1710 (2014). It held that restitution is “proper under § 2259 only to the extent the defendant's offense proximately caused a victim's losses.” *Id.* at 1722. The Court then concluded that a “victim's costs of treatment and lost income resulting from the trauma of knowing that images of her abuse are being viewed over and over are direct and foreseeable results of child-pornography crimes,” and thus a proximate cause thereof. *Id.*

Once proximate cause is established, a court must determine the proper amount of restitution by assessing “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.” *Id.* at 1727-28. “This cannot be a precise mathematical inquiry and involves the use of discretion and sound judgment.” *Id.* at 1728. While the inquiry evades application of “a precise algorithm,” district courts can begin by determining “the amount of the victim's losses caused by the continuing traffic in the victim's images,” and then “set an award of restitution in consideration of factors that bear on the relative causal significance of the defendant's conduct in producing those losses.” *Id.*

III. DISCUSSION

*3 The instant case is not perfectly analogous to *Paroline* and its progeny, but it is close. Like the typical *Paroline* case, the Court is faced with questions of causation and allocation of responsibility between the defendant and several non-defendants. The Court is also faced with substantial uncertainty regarding the number of future viewers of the child pornography, and the future extent of harm that the victim will suffer. The nature of the harm

suffered by Doe is also similar to that of a victim in a typical *Paroline* case. As Doe's mother stated at Hoskins' sentencing hearing, everyone at Doe's school knew about the incident, and knew that there was a video recording of it. Thus, while there is some uncertainty about whether the video was circulated beyond the initial person to whom it was sent,² a large number of individuals are aware of the victim's rape, and that it was recorded. The psychological effect on Doe is, no doubt, similar to that of victims whose images are widely reproduced. Given these similarities, *Paroline* is highly instructive to the Court's restitution analysis.

A. Determining Doe's Damages

The first step in the Court's analysis involves estimating Doe's full damages. *Cf. United States v. Evans*, 802 F.3d 942, 949 (8th Cir. 2015) (stating that the victim's "full restitution amount was \$1,346,158.12" and then noting that the district court applied the *Paroline* factors to determine the "appropriate amount" of the defendant's liability) (*petition for cert. filed*). As will become apparent, the Court is not estimating the amount of Doe's full damages to use it as part of "a purely mathematical or mechanical exercise." *Id.* at 950 (quoting *Paroline*, 134 S.Ct. at 1728). Rather, the estimated amount is useful to the Court as a "rough guidepost[] for determining an amount that fits the offense." *Id.*

To date, Doe has incurred a total of \$11,895 in *documented* losses, evidenced by St. Paul's ledger and the invoices referenced above. Though there is no documented proof to support the other expenses claimed by Doe's mother in her victim impact statement, (Doc. 49-2), it would be naïve to conclude that none were incurred. Specifically:

- (i) Doe traveled to and from Colorado in 2015 to obtain psychological care;
- (ii) She was seen at Washington Regional Medical Center after her abuse occurred;
- (iii) Doe's mother testified that Doe was admitted to a facility due to her suicidal behavior shortly after the incident;
- (iv) The Court credits Doe's mother's statement that she has suffered lost wages, though it does not credit

her claimed amount of \$6,000, for which there is no support; and

- (v) Doe's mother testified that Doe continues to receive therapy.

Despite the lack of documentation to support the specific amounts of these expenses, the Court can still consider them in awarding restitution. In the recent case of *United States v. Emmert*, the Eighth Circuit affirmed a district court's award of restitution in a child pornography case "despite the fact that [the minor] ha[d] not documented each expense." ___ F.3d ___, 2016 WL 3343364 at *4 (8th Cir. June 15, 2016). The district court was "entitled to rely on the testimony and a basic knowledge of medical expenses in determining that \$500 in restitution was a reasonable and likely understated sum for the type of medical and psychological treatment [the minor] required." *Id.* "[T]he mere absence of evidence detailing the specific nature and timing of medical expenses [was] not sufficient to show an abuse of discretion." *Id.*

Following *Emmert's* instruction, the Court will credit \$3,000 in damages for the above-listed expenses. This amount is undoubtedly a "reasonable and likely understated" estimate. *Id.* Flights from Fayetteville, Arkansas to Denver, Colorado regularly cost north of \$300.00 each way. *See* <http://www.google.com/flights> (search XNA to DEN). Emergency room visits, even for just a few hours, often cost over \$1,000. *E.g.*, Lindsay Abrams, *How Much Does It Cost to Go to the ER?*, *The Atlantic* (Feb. 28, 2013) (available at <http://www.theatlantic.com/health/archive/2013/02/how-much-does-it-cost-to-go-to-the-er/273599>).

Inpatient care at a psychiatric or psychological facility is several hundred dollars, even for a short stay. *E.g.*, Doc. 59-2, pp. 5-6. The cost of therapy, even if just for one session a week at the \$40.00 rate charged by Doe's Fayetteville therapist, would be over \$1,600 from the time she returned to Arkansas in October of 2015. *Id.* at 2. Further, this latter figure is likely understated significantly, given that the one record of Doe's counseling in Arkansas shows seven sessions over approximately four weeks. *Id.* That record also includes a handwritten note stating that \$1,200 was "currently due" as of May 31, 2016. *Id.* Using these low estimates, the amount of expenses is already over \$3,000, without factoring lost wages. This amount, as the Court stated, is intended to be a reasonable but low estimate, due to the lack of documentation of the expenses.

*4 Adding the \$3,000 to the \$11,895 in documented expenses brings the costs incurred by Doe to \$14,895. The Court's inquiry into Doe's damages, however, does not end there. The Court will also consider the medical expenses the victim is likely to incur in the future. "The law is clear that a restitution order entered pursuant to § 2259 may include restitution for estimated future medical expenses." *United States v. Cooley*, 2014 WL 5872720, at *2 (D. Neb. Nov. 12, 2014) (citing *United States v. Pearson*, 570 F.3d 480, 486-87 (2d Cir. 2009); *United States v. Laney*, 189 F.3d 954, 966-67 (9th Cir. 1999); and *United States v. Palmer*, 643 F.3d 1060, 1066-67 (8th Cir. 2011)). Though this amount must be "reasonably certain," *id.* n.2, determining any amount of future expenses is necessarily an imperfect science. Thus, in *Palmer*, for example, the Eighth Circuit affirmed a district court's award of \$200,000 in damages after an expert testified that the true cost would likely be about \$1,000,000. 643 F.3d at 1068.

There are two sources of information in the record from which the Court could potentially draw to estimate Doe's future medical expenses. The first is the letter from the Trauma and Recovery Specialist in Colorado, which projected over \$100,000 in costs per year. (Doc. 59-2, p. 1). The second is the records of medical expenses already incurred by Doe, which the Court can use to project her costs moving forward. *Id.* at 2-6. The Court believes the latter source of information provides a more accurate estimate of future costs. This is so for several reasons. First, the letter provides little information about the author's qualifications. Second, the letter does not reveal what sources the author used to conclude that outpatient care would cost \$1,000 per week and inpatient care would cost \$2,000 per week. Third, the care that Doe has already received evinces much lower amounts than those \$1,000 and \$2,000 figures. For example, even if Doe were to receive two sessions of counseling per day, seven days a week, at the \$40 rate charged by her Fayetteville therapist, the cost would be about half of the letter's \$1,000 estimate. And, Doe's inpatient care in Colorado cost \$120 per day—or \$840 per week.

The Court finds, based in large part on Doe's mother's victim impact statement and her in-court testimony, that Doe will require psychological treatment into the indefinite future. She testified that Doe has trouble sleeping, is prone to outbursts, is not progressing in

school, has become socially withdrawn, does not like being filmed, is afraid to sleep with the lights off, and is afraid to shower alone. Given the nature of her abuse, these symptoms will not go away in a short period of time, or perhaps ever. The Court estimates that Doe will incur at least \$40,000 in future psychological and related expenses. To be sure, this is an extremely low estimate. Projecting 15 years of outpatient therapy at a modest average of \$50 per week, for example, is \$39,000 alone. This does not include any inpatient care, medications, or other medical expenses that Doe may require.

The Court will, accordingly, use \$40,000 as a barometer for Doe's future medical expenses. This brings her total damages to an estimated \$54,895. Again, this constitutes a necessarily understated amount, due to the relative dearth of documentation in this case.

B. Determining Proximate Causation

The Court must next determine what amount of these damages was proximately caused by Hoskins. *See Paroline*, 134 S. Ct. at 1722 ("Restitution is ... proper under § 2259 only to the extent the defendant's offense proximately caused a victim's losses."). The Court's task here is to "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." *Id.* at 1727-28. "This cannot be a precise mathematical inquiry and involves the use of discretion and sound judgment." *Id.* at 1728.

*5 The Court finds that a restitution award of \$7,500 is appropriate in this case. To be sure, most of Doe's damages were not proximately caused by Hoskins. They were caused by Jason Henry, LaQuentin Jones, and other unknown offenders. But Hoskins' actions proximately caused a significant part of those damages too. Hoskins filmed Doe being raped, and distributed the video to another minor. The rape occurred, moreover, at her apartment while she was (obviously) present. Meanwhile, she knew that Doe was under the age of 18 and the person having sex with her was over the age of 18.

Doe's mother explained that Doe no longer likes being filmed. She explained that she pulled Doe out of school for some time because her classmates knew about the rape, and knew that it had been recorded. When attempting to

parse the harm caused by Hoskins from the harm caused by the other offenders, she described the video recording as being like having a memento—a terrible reminder—of the event. She and Doe will have to live with the constant fear that the video is, or will be, uploaded to the internet, and seen by any number of people. Certainly, then, Hoskins' conduct proximately caused some of Doe's past, present, and future expenses. An award of \$7,500 represents less than 15% of the \$54,895 in damages estimated by the Court—tracking the Court's finding that most of Doe's damages were caused by non-defendants. It is worth reiterating that the Court does not view these “less than 15%” and “\$54,895” figures as exact inputs into a mathematical formula; rather, they are approximated benchmarks that the Court has used in exercising its discretion to fashion a reasonable award of restitution.

IV. CONCLUSION

For the reasons stated herein, the Court **ORDERS** that restitution be awarded to Doe in the amount of \$7,500. To effectuate this Order, the Probation Office shall promptly prepare a separate restitution order setting forth the terms and conditions of repayment, for the Court's approval.

IT IS SO ORDERED on this 16th day of August, 2016.

All Citations

Not Reported in F.Supp.3d, 2016 WL 4408828

Footnotes

- 1 When the victim “is under 18 years of age” the term “victim” includes “the legal guardian of the victim.” *Id.* at (c).
- 2 There is at least some indication that the video was circulated beyond the initial person to whom it was sent. Namely, Doe's mother testified that she heard about some details of the video from people who had seen it.

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 16-3532

United States of America

Appellee

v.

Jessyca Hoskins

Appellant

Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:15-cr-50045-TLB-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

January 19, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans