



◉ Texas court case raises question of whether child-porn viewers should pay restitution to rape victim

By DIANE JENNINGS

Staff Writer

djennings@dallasnews.com

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Amy was only 8 when an uncle raped her, photographed the assault and shared the images with thousands of people across the country.

As a victim, she is entitled to restitution under federal law. Her uncle, who went to prison, undoubtedly owed her. She collected a few thousand dollars from him years ago, her attorney says.

But Amy, now in her 20s, also wants to collect from those who, years later, possessed and watched the pornographic images.

Over the years, federal courts have differed on whether those who possess the images are responsible for damages. And if they are, how much restitution should they pay?

Some courts have sided with the victim, ordering defendants who possess the images to pay thousands of dollars as part of their punishment in criminal cases.

Other judges have resisted ordering restitution unless the victim can show "proximate cause," or a direct connection between the harm done and the viewer.

The case of an East Texas man who viewed images of Amy's assault may force the U.S. Supreme Court to decide the issue.

Unsettled area of law

"We're talking about an area of the law that just plainly is not settled," said Meghan Ryan, assistant law professor at Southern Methodist University.

Amy, a pseudonym used in court filings, was raped after a pedophile contacted her uncle and asked him to sexually abuse his niece and visually record the assault, according to government documents.

Years later, the East Texas man, Doyle Randall Paroline, pleaded guilty to possessing pornography, including two images of Amy's assault.

In Paroline's criminal case, the judge acknowledged Amy was victimized. But he denied restitution because it could not be determined how much of Amy's losses were directly caused by Paroline's possession of the pictures.

That decision was overturned in October by the 5th Circuit Court of Appeals, which said demonstrating a direct connection is not necessary.

One of Amy's lawyers, University of Utah professor Paul Cassell, said that although viewers of child porn didn't commit the initial abuse, they are "the people who create the market for the sexual abuse of children."

"It's entirely appropriate to hold the consumers of these images accountable," Cassell said.

In the last four years, Cassell and co-counsel James R. Marsh of New York have filed hundreds of requests for restitution on Amy's behalf, always asking for about \$3.3 million from each viewer, primarily for "future psychological care and future lost income."

According to court documents, Amy initially recovered from the abuse. But her condition "drastically deteriorated" years later when she learned images of the assaults were being widely collected and traded.

Amy's trauma continues, her lawyers say, because she is constantly revictimized and is powerless to stop it.

Her attorney receives an average of one notice a day of new cases involving her image. The number of notifications is now more than 1,500, and her attorneys estimate at least 10,000 criminals have possessed the pictures.

Covering losses

Cassell said Amy has received more than \$1 million in restitution so far. When she receives the amount needed to cover her losses, he said, they'll stop seeking restitution — even though the pornographic images probably will never disappear.

"A reasonable estimate of the total number of persons who will collect Amy's images over the course of her lifetime is 100,000," according to her petition.

"She's not going to double collect," Cassell said. "Once the bucket is filled to the top, at that point we won't ask for any more."

Paroline's appellate attorney, Stanley Schneider of Houston, acknowledged that Amy was "horribly abused" but said she hasn't shown a direct connection between the harm she suffered and his client's behavior.

Amy, who grew up in Pennsylvania, was not even aware of Paroline's existence or conduct, he said, pointing out that his client was not arrested until 2009 — after she had already presented evidence of damages.

"Since 2008, all the records are the same," he said. "The testimony is the same, the expert opinion is the same. There has been nothing new."

If his client bears any responsibility, it shouldn't be for the full \$3.3 million, Schneider said.

"The uncle, or the person who is selling it, or the person who's distributing it is equally responsible," he said. "If Paroline had two images, and a guy in Maine has 50 images, are they each equally liable for damages?"

The case has placed the Department of Justice in a difficult position, said Ryan, the SMU professor.

Prosecutors are responsible for seeking restitution for victims as part of the defendant's criminal case. After Paroline was sentenced to two years in prison, U.S. attorneys asked the judge for full restitution.

But after he denied it, they agreed with Paroline's lawyers on appeal that the victim must show "proximate cause."

That decision, which was announced as a national policy, puzzles Cassell.

"It's extremely disappointing to find that the Justice Department, which is responsible for making sure crime victims' rights are protected, [is] in fact taking the side of criminal defendants in these cases," he said.

Camille Sparks, assistant U.S. attorney for the Northern District of Texas and a coordinator of Project Safe Childhood, said the department's position is "that we need to be able to prove proximate cause of the harm."

"It's not an impossible burden," she said, "but it's a hard burden."

Ryan said that while "most people see the government as being the victims' advocate," prosecutors have "to be concerned about basic things, like justice, because that's what the public's interest is. The government is interested in doing what's right — which is not necessarily what the victim wants."

Cassell said that if a defendant feels he shouldn't have to pay the full amount, he can sue other defendants to pay a share. That burden should not be placed on victims, the former federal judge said.

'Burden shifts'

"I think the burden shifts to the wrongdoers of the crime to pay the full amount," Cassell said.

Schneider has another suggestion, which he admits sounds "kind of cold."

If Amy is traumatized every time she is notified that someone saw her picture, "then tell your lawyer not to tell you and get on with your treatment," Schneider said.

Cassell and Sparks said they expect the Supreme Court to take the case. Schneider and co-counsel F.R. "Buck" Files said they plan to file Paroline's appeal to the high court in a few weeks.

As the case moves forward, Amy is watching the developments closely.

With the money she's already collected, she bought a house, has saved money for her son's education and undergoes therapy several times a week, said her attorney, James Marsh.

She even attended oral arguments at the 5th Circuit several months ago, an experience Marsh said she finds "empowering."



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